

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Erik V. Lundquist, Associate Planner
VIA: Charlene Gallina, Planning and Building Director
REVIEWED BY: Rafael Mandelman, Deputy City Attorney
DATE: July 21, 2009
SUBJECT: Special Assessment and Lien Public Hearing - John D. Busk
Property Kortum Canyon Road (APN 011-310-023)

APPROVAL FOR FORWARDING:


James C. McCann, City Manager

ISSUE: Conduct a public hearing and consider a Resolution regarding the levy of a Special Assessment and Lien to recover costs associated with the abatement of the Public Nuisance Abatement authorized by City Council Resolution 2007-084 on a 32.10-acre property located off of Kortum Canyon Road, further described as APN 011-310-023, currently owned by Mr. John D. Busk.

RECOMMENDATION: Staff recommends that the following actions be taken: 1) conduct a public hearing to consider the report on the levy of a Special Assessment and lien to recover costs associated with the abatement; 2) approve a Resolution which authorizes the lien to be recorded and the special assessment included in the FY 09-10 tax roll.

BACKGROUND/DISCUSSION: The 32.10-acre property located off of Kortum Canyon Road, further described as APN 011-310-023, is owned by Mr. John D. Busk. The property is currently vacant, with the exception of miscellaneous improvements. The property has a land use designation of Rural Residential – Hillside as identified in the 2003 General Plan Update and the property is within a "RR-H", Rural Residential Hillside Zoning District.

On August 21, 2007, the City Council held a duly noticed public hearing regarding various violations of the Calistoga Municipal Code (CMC) and state law. After consideration of the evidence presented at the hearing, including oral and written testimony from City staff and Mr. Busk, the City Council deliberated and adopted Resolution 2007-084 declaring the property conditions a public nuisance in violation of the CMC. The Council further ordered the abatement of the public nuisance and recovery of cost of the abatement from the property owner.

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26 During the public hearing, Mr. Busk was informed that the Council may order that any
27 costs of such abatement be assessed upon the property, and that such costs may
28 constitute a lien upon the property until paid in full. The Council also authorized and
29 directed the City Manager to recover the costs of the abatement by any means permitted
30 by state and local law, including any costs incurred regarding the processing and
31 recording of the lien.

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33 Attached is a copy of the Resolution 2007-084. The entire staff report is available for
34 review from the City Clerk.

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36 **Abatement of the Public Nuisance**

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38 Staff received a complaint in late 2004 of unauthorized construction activity occurring on
39 a portion of Mr. Busk's Kortum Canyon Road property. These construction activities
40 included:

- 41
- 42 1. Site grading (CMC Section 17.15.010(B), Section 17.06.020(A)(2), Chapter 15.12
 - 43 *et seq.*, and 2001 California Building Code, Sections 3304, 3306.1 and 3309.1);
 - 44 2. Stockpiling of dirt and rock (CMC Section 17.15.010(B), Section 17.06.020(A)(2),
 - 45 Section 8.24.020, and Chapter 15.12 *et seq.*, and 2001 California Building Code,
 - 46 Section 3304);
 - 47 3. Construction and stockpiling of materials within the drip line of protected trees
 - 48 (CMC Section 17.15.010(B), Section 17.06.020(A)(2) and Section 19.01.040(C));
 - 49 4. Storage of construction materials (CMC Section 8.24.020);
 - 50 5. Alterations to drainage patterns (CMC Section 17.15.010(B), Section
 - 51 17.06.020(A)(2) and Chapter 15.12 *et seq.*, and 2001 California Building Code,
 - 52 Sections 3315, 3315.1, 3315.4);
 - 53 6. The construction of retaining walls (CMC Section 17.15.010(B), Section
 - 54 17.06.020(A)(2) and Chapter 15.12 *et seq.*, and 2001 California Building Code,
 - 55 Sections 3304, 106.1);
 - 56 7. Improperly designed and failing storm drainage junction box (CMC Chapter 15.12
 - 57 *et seq.*, and 2001 California Building Code, Sections 3315, 3315.1, 3315.4 and
 - 58 106.1).

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60 From 2004 to 2007 the City repeatedly requested Mr. Busk's attention to the
61 ongoing/existing violations relating to the unauthorized construction activities that have
62 occurred on the property and the process to gain compliance. Cooperative efforts were
63 unsuccessful and the property owner did not correct the violations in the agreed
64 timeframe.

65
66 After repeated attempts to work with the property owner to abate the nuisance, the City
67 was forced to initiate the abatement process which culminated in the August 21, 2007
68 public hearing. Subsequent to the public hearing, the City Council declared, by
69 resolution, a public nuisance existed and ordered its abatement. At that time, Mr. Busk
70 was also informed that any costs of such abatement, including reasonable attorneys'
71 fees incurred by the City in the nuisance abatement proceeding, would be assessed
72 upon the property, and that such costs constitute a lien upon the property until paid in
73 full.

74 Between August of 2007 and February of 2009 the City abated the nuisance. On May 1,
75 2008, the City sent Mr. Busk a letter informing him that the first part of the abatement
76 process would begin, which would include limited clean up of the property. This clean up
77 activity was limited in scope and only included the collection of loose debris and refuse,
78 including but not limited to, broken beer bottles, milk containers, plastic garbage and
79 recycling containers, piping, lumber, railroad ties, and reinforced concrete pipe. On May
80 6, 2008, this portion of the abatement was carried out and the material was transferred
81 to a City yard and held there until Mr. Busk retrieved it.

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83 On May 6, 2008, Council approved a Professional Services Agreement (Resolution No.
84 2008-39) with Coastland Civil Engineering to perform Project Management, Design,
85 Environmental Documentation, Bidding, Construction Management, and Inspection. On
86 September 2, 2008, the Council approved the Project Plans prepared by Coastland
87 Engineering and authorized Staff to move forward with the bid process for contractors to
88 perform the final phase of the nuisance abatement on the Property.

89
90 On October 6, 2008, the City sent Mr. Busk and his counsel a letter requesting
91 permission to enter the Property to remediate the remaining nuisances on the Property.
92 On October 7, 2008 the City Council adopted Resolution No. 2008-088 awarding a
93 contract to Harold Smith & Son, Inc. for abatement work. An inspection warrant and
94 abatement order was obtained from Napa County Superior Court on November 7, 2008.

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96 On December 12, 2008, the City executed the contract with Harold Smith and Sons, Inc.
97 The project was completed on February 6, 2009, and all the requirements for the scope
98 of work in the construction contract have been met. These improvements have been
99 inspected and approved by the City Engineer.

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101 The abatement process is now complete.

102 103 **Recovery of the cost of the Abatement and Lien process**

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105 As noted above, Resolution 2007-084 provided for recovery of all costs associated with
106 the abatement order under provisions of the Calistoga Municipal Code and State
107 Government Code. CMC Section 1.12.120 provides for a Special Assessment and Lien
108 process to recover the costs of the abatement by placing a lien on the property and a
109 special assessment on the current property tax roll. The lien will have the same
110 standing as a judgment lien and, if not paid, may be foreclosed on by the County Tax
111 Collector after three years. Any additional administrative or legal costs associated with
112 the processing of the lien or the foreclosure action may be recovered from the property
113 owner.

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115 The cost of the abatement and lien process is estimated at \$197,121.66. This amount
116 includes actual costs of the abatement of the nuisance and the legal and code
117 enforcement costs. The amount also includes the estimated legal, administrative and
118 County costs of the Lien process, and such amount will be revised, not to exceed the
119 total lien amount, once those costs are finalized. The costs do not include any future
120 costs of a foreclosure process, if necessary, to recover the funds expended on this
121 abatement. Such foreclosure costs will be included in the foreclosure process.

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Process to Levy a Special Assessment and Lien

The special assessment and lien process is outlined in the CMC 1.12.120 and the State Government Code Section 38773.5. In summary, the process requires that the property owner be provided proper notice of the public hearing, a copy of the Special Assessment and Lien, and a cost report detailing the abatement costs. The owner must also be given an opportunity at the public hearing to object to the costs of the abatement. The Council will review the cost report and may make modifications, but the Council may not increase the amount to be assessed without new notice to the owner. The Council may also adopt a resolution to levy the special assessment and lien.

The property owner, John D. Busk, was sent on June 4, 2009 via certified mail, return receipt requested, a public hearing notice for a June 16 hearing on the assessment and lien, as well as a copy of Resolution No. 2007-084, a copy of the Special Assessment and Lien, and a cost report detailing abatement costs in the amount of \$200,444.14. At the June 16 hearing, Mr. Busk's counsel requested and the Council granted a continuance of the hearing until July 9 to allow him additional time to review the cost report. On July 9 Staff requested and the Council granted an additional continuance until July 21 to allow further review of the cost report and supporting documentation. Based on this review, staff and the City Attorney have determined that the legal costs attributable to the abatement should be reduced from \$42,375.89 (the amount stated in the original notice of the June 4 hearing) to \$38,053.41 and that the estimate of legal costs associated with the assessment and lien process should be increased from \$3,500 to \$4,500. The overall amount of the assessment and lien has consequently been reduced from \$200,444.14 to \$197,121.66.

Staff have therefore re-noticed this July 21 hearing and have sent Mr. Busk on July 9, 2009, via certified mail, return receipt requested, the public hearing notice, a copy of the Special Assessment and Lien, and a cost report detailing the abatement costs in the amount of \$197,121.66. The public hearing notice was also posted on the property and the official City public bulletin boards. A letter with the public notice information was also sent by certified mail. Attached is a copy of the letter, notice, cost report, and draft lien that was delivered to the property owners via personal delivery and certified mail.

This document and process have been reviewed by the City Attorney's Office for compliance with the CMC and State law.

FISCAL IMPACT:

The City staff and City Attorney's office spent an estimated 550 hours of time during the code enforcement and abatement process. The direct work to abate the public nuisance was by contractor services and cost \$141,723.37. The City staff, City Attorney's office and County staff will spend an estimated 50 additional hours on the special assessment and lien process to recover the costs of the public nuisance abatement. The details of the time and costs are attached in Exhibit A of the Resolution. At the end of the Public Hearing, the staff will advise the City Council of the actual final amounts to be assessed.

Abatement Process

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| Code Enforcement (Administrative Services) | \$11,094.88 |
| Legal Services | \$38,053.41 |
| Abatement of Nuisance | \$141,723.37 |
| | <hr/> |
| | \$190,871.66 |

Special Assessment and Lien Process

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|-------------------------|-------------------|
| Legal Services | \$4,500 |
| Administrative Services | \$1,700 |
| County Processing | \$50.00 |
| | <hr/> |
| | \$6,250.00 |

Total Costs to be recovered from Special Assessment and Lien

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| | <hr/> |
| | \$197,121.66 |

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The source of payment for the abatement costs, until such time as they may be recovered from the property owner, is the General Fund Special Projects cost center. The City Council budgeted \$251,500 from the General Fund Special Projects cost center during Fiscal Years (FY) 07/08 and 08/09. The actual and estimated costs for the abatement total \$197,121.66. Pursuant to the attached resolution, such costs would be recovered through a special assessment on the FY 09-10 revised tax bill or a lien foreclosure process, after three years. Such a foreclosure process would require the City to incur additional costs which may also be recovered at the time of the foreclosure.

ATTACHMENTS:

1. Draft Resolution with Exhibit A detailing actual abatement costs and Special Assessment and Lien process costs
2. Resolution 2007-084
3. Letter dated July 9, 2009 to Mr. Busk

RESOLUTION NO. 2009-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA DECLARING
RECOVERY OF NUISANCE ABATEMENT COSTS AND IMPOSING A SPECIAL
ASSESSMENT AND LIEN ON THE LANDS OF JOHN D. BUSK, ASSESSOR'S
PARCEL NUMBER 011-310-023

1 **WHEREAS**, on August 21, 2007, the City Council of the City of Calistoga conducted a
2 duly noticed public hearing in accordance with Chapter 1.12 of the Calistoga Municipal Code to
3 consider an alleged public nuisance on the lands of John D. Busk (APN 011-310-023), a 32.10-
4 acre property located off of Kortum Canyon Road in Calistoga ("Property");
5

6 **WHEREAS**, on August 21, 2007, the City Council heard oral and written testimony
7 regarding the alleged public nuisance, deliberated, and subsequently adopted Resolution 2007-
8 084 declaring a public nuisance on the Property. The Resolution also authorized and ordered
9 the abatement of the public nuisance;

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11 **WHEREAS**, both prior to and following the public hearing, the City extended numerous
12 opportunities to the property owner to abate the public nuisance, but the property owner failed to
13 do so;

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15 **WHEREAS**, between August of 2007 and February of 2009, City staff spent
16 considerable time working with the property owner to abate the nuisance;

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18 **WHEREAS**, on May 1, 2008, the City sent Mr. Busk a letter informing him that the first
19 part of the abatement process would begin, which would include limited clean up of the
20 property. This clean up activity was limited in scope and only included the collection of loose
21 debris and refuse, including but not limited to, broken beer bottles, milk containers, plastic
22 garbage and recycling containers, piping, lumber, railroad ties, and reinforced concrete pipe. On
23 May 6, 2008, Blakeley Construction, Inc. carried out the first portion of the abatement and
24 transferred the materials to a City yard where they were held until Mr. Busk retrieved them;

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26 **WHEREAS**, on May 6, 2008, Council approved a Professional Services Agreement
27 (Resolution No. 2008-39) with Coastland Civil Engineering to perform Project Management,
28 Design, Environmental Documentation, Bidding, Construction Management, and Inspection;

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30 **WHEREAS**, on September 2, 2008, the Council approved the Project Plans prepared by
31 Coastland Engineering and authorized Staff to move forward with the bid process for
32 contractors to perform the final phase of the nuisance abatement on the Property;

33
34 **WHEREAS**, on October 7, 2008 the City Council adopted Resolution No. 2008-088
35 awarding a contract to Harold Smith & Son, Inc. for construction of the abatement;

36
37 **WHEREAS**, an inspection warrant and abatement order was obtained from Napa
38 County Superior Court on November 7, 2008;

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40 **WHEREAS**, on December 12, 2008, the City executed the contract with Harold Smith
41 and Sons, Inc. The project was completed on February 6, 2009 and all the requirements for the
42 scope of work in the construction contract have been met;

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44 **WHEREAS**, pursuant to Resolution 2007-084, the City Council made funds available to
45 abate the public nuisance and the City incurred costs associated with the abatement process in
46 the amount of \$190,871.66;

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48 **WHEREAS**, the City also incurred or will incur costs in the amount of \$6,250.00 for the
49 processing and recording of the special assessment and lien;

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51 **WHEREAS**, the City maintained an accurate accounting of the costs associated with the
52 abatement and special assessment and lien processes, and such accounting is attached hereto
53 and incorporated herein as Exhibit A;

54
55 **WHEREAS**, Resolution 2007-084 provided for the recovery of costs associated with the
56 abatement of the public nuisance in accordance with state law and the Calistoga Municipal
57 Code;

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59 **WHEREAS**, the City Council wishes to recover all costs incurred in conjunction with the
60 abatement and special assessment and lien processes in accordance with Calistoga Municipal
61 Code Chapter 1.12 and Government Code section 38773.5;

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63 **WHEREAS**, the property owner, John D. Busk, was properly noticed regarding the
64 public hearing on the costs associated with the abatement and special assessment and lien
65 processes in accordance with Chapter 1.12 of the Calistoga Municipal Code and Government
66 Code Section 38773.5; and

67
68 **WHEREAS**, on July 21, 2009, the City Council held a duly noticed public hearing in
69 accordance with Chapter 1.12 of the Calistoga Municipal Code to hear testimony about and
70 consider recovery of the costs associated with the abatement and special assessment and lien
71 processes.

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73 **NOW, THEREFORE, BE IT RESOLVED**, that upon review of the oral and written
74 testimony presented at the hearing, and after reasonable deliberation, the City Council hereby
75 finds that costs in the amount of \$197,121.66, associated with the abatement of the public
76 nuisance and processing and recording of the special assessment and lien are proper and
77 reasonable.

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79 **BE IT FURTHER RESOLVED**, that the City Council hereby authorizes a special
80 assessment and lien against the Property of John D. Busk (Assessor Parcel Number 011-310-
81 023) and recordation of the special assessment and lien in the office of the Napa County
82 Recorder.

83
84 **BE IT FURTHER RESOLVED**, that the City Council authorizes and directs the City
85 Manager to proceed, if necessary, with any actions, and incur reasonable costs, as permitted by
86 State Law and the Calistoga Municipal Code to enforce the lien and recover the funds.

87
88 **BE IT FURTHER RESOLVED**, that the City Council requests the County Auditor-
89 Controller to place the special assessment on the Fiscal Year 2009-2010 Tax Roll and the
90 County Tax Collector to revise the current Fiscal Year 2009-2010 Property Tax bill to include the
91 Special Assessment of \$197,121.66 in accordance with County procedures and State Law.

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99 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a
100 regular meeting held this **21st day of July 2009**, by the following vote:

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105 **AYES:**

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107 **NOES:**

108 **ABSTAIN/ABSENT:**

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JACK GINGLES, Mayor

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115 **ATTEST:**

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SUSAN SNEDDON, City Clerk

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