

**INDIAN RIVER COUNTY
MEMORANDUM**

TO: Jason E. Brown
County Administrator

DEPARTMENT HEAD CONCURRENCE:

Phillip J. Matson, AICP
Community Development Director

FROM: Andrew Sobczak
Chief, Environmental Planning
& Code Enforcement

DATE: 6/22/2021

RE: Request for Authorization to Abate a Public Nuisance Located at 1262 15th Avenue

It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of July 6, 2021.

DESCRIPTION AND CONDITIONS

Michael and Kelly Palmer own a residential property located at 1262 15th Avenue in Indian River County. On 3/4/2020, county code enforcement staff received a complaint regarding an accumulation of junk, trash, and debris, and vehicle storage at the property. Following an inspection of the property, staff sent a Notice of Code Violation to Michael and Kelly Palmer regarding violations including junk, trash, and debris, storage of commercial vehicles, storage of junk vehicles, vehicle, boat, and trailer storage, and a zoning district use violation.

On September 28, 2020, code enforcement staff presented these violations to the Code Enforcement Board at an evidentiary hearing. The Board supported staff's finding of multiple violations and entered an Order Finding Violation, granting approximately 60-days for the violations to be resolved. After approximately 60-days had passed, on November 23, 2020, the Code Enforcement Board held a compliance hearing. At that hearing, the Board found that no progress had been made towards resolving the violations, and a \$100.00 per-day fine beginning on November 21, 2020, and continuing until the violations are resolved was imposed.

Following the start of the daily fine, staff continued to receive numerous citizen complaints regarding the condition of the property. By May of 2021, while the Board's daily fine had accrued to a sum of approximately \$18,000.00, staff had also documented a significant escalation in the degree of the violations. As such, on May 24, 2021, the Code Enforcement Board heard the case again at a compliance hearing and determined that the violations constitute a public nuisance warranting county abatement.

ANALYSIS

In January 2008, the Board of County Commissioners adopted revisions to the County Public Nuisance Ordinance. Under the ordinance (County Code Section 973.04), the Code Enforcement Board can make a determination that a code violation constitutes a public nuisance (*posing a serious threat to public health, safety and welfare or is irreparable or irreversible in nature*). Following this determination, the Code Enforcement Board directs staff to notify the Board of County Commissioners, which no sooner than 30 days after the compliance hearing, may direct the county administrator (or his/her designee) to abate the nuisance, with costs of the abatement to be recorded as a lien against the property.

At the May 24, 2021, compliance hearing, the Code Enforcement Board found that the code violations at the Palmer property constitute a public nuisance posing a serious threat to public health and safety. The Code Board entered an order (“...Determining Public Nuisance Warranting County Abatement”) directing County Staff to request that the Board of County Commissioners consider authorizing the county administrator to take action to abate the public nuisance.

ALTERNATIVES

The Board of County Commissioners has several alternatives to consider in this matter. These alternatives are:

1. Take no action. This alternative would result in daily fines continuing to accrue at \$100 per day in the form of a lien against the real and personal property of Michael and Kelly Palmer, until the violations are resolved. This alternative would not alleviate any potential hazards resulting from the code violations onsite.
2. Direct staff to seek a court order to enter onto the subject property and resolve the code violations by removing the materials stored onsite. This alternative would alleviate the potential hazards, but would result in county expense that would be recorded as lien against the property that may or may not be recovered by the county in the foreseeable future.

As part of Alternative 2, the County Attorney’s Office would also seek an injunction preventing Michael and Kelly Palmer from accumulating materials onsite in the future.

RECOMMENDATION

Staff recommends Alternative 2, that the Board of County Commissioners direct staff to seek a court order to allow staff access to the subject property to abate the nuisance, authorizing the county’s employees, servants, agents or contractors to enter upon the Palmer property located at 1262 15th Avenue at all reasonable times, and take whatever action is necessary to abate the nuisance described in this report, with costs of the abatement to be recorded as a lien against the subject property.

FUNDING

Funding for the expenditure (estimated at \$10,000) will be made available in MSTU/Road & Bridge/Other Contractual Services, Account# 00421441-033490 through a budget amendment from MSTU/Reserve for Contingency.

ATTACHMENTS

1. Photos of the subject property.
2. Code Enforcement Board Order Determining Public Nuisance Warranting County Abatement.
3. County Code Chapter 973.
4. Minutes from the May 24, 2021 Code Enforcement Board meeting