



## STAFF REPORT

### TOWN COUNCIL MEETING OF DECEMBER 13, 2011

To: Town Council

From: Rick Angelocci, Town Manager

A handwritten signature in black ink, appearing to be 'R. Angelocci', written over the printed name.

Subject: Gaber Appeal of Town Manager Decision

Date: December 1, 2011

#### ISSUE/BACKGROUND

On November 7, 2011, the Town Manager held an Administrative Hearing pursuant to Town Code Section 7.04.060 regarding the failure to abate a nuisance by the date (October 28, 2011) set forth in the previously issued Notice to Abate and Order to Show Cause. On November 10, 2011, the Town Manager notified the property owners and their representatives of the decision, findings of fact and conclusions of law as provided by the Town Code (See Exhibit A).

As noted in the decision, the Town Manager found the following conditions which independently constituted a nuisance under the Town Code:

- there was debris visible from a street for an unreasonable period of time including construction material and fire damaged materials detached from the building;
- the property contained an attractive nuisance dangerous to children and visible from a street especially since the temporary fence did not adequately secure the building; and
- the property was boarded-up or in a partial state of construction for an unreasonable period of time.

The decision also provided a timeline for the abatement of these conditions.

As provided for in Town Code Section 7.04.080, the property owner, through their legal counsel, timely appealed the above-referenced decision (See Exhibit B).

## **RECOMMENDATION**

Receive and Review Administrative Hearing Officer Determination and Statement of Appeal; Take Testimony, Hold Hearing and Adopt a Resolution Upholding, Rejecting or Modifying Town Manager Determination.

## **CEQA**

There are no CEQA issues at present.

## **FINANCIAL IMPLICATIONS**

There are no financial issues at present, however, should the Town proceed with abatement of the nuisance, there will be a cost to the Town of approximately \$15,000 – 20,000, of which would be placed as a lien against the property.

## **DISCUSSION**

The subject property contains a partially constructed building, or house, which was significantly damaged by a fire in March of 2011, and which is presently partially boarded-up and surrounded by a temporary chain-link fence. The property owners were noticed on May 10, 2011 to abate or begin reconstruction of the structure.

Apparently, circumstances surrounding the fire were suspicious and an ensuing arson and insurance investigation took several months to come to conclusion (the fire was arson) and to determine if the structure was covered by insurance (it is). The coverage issue was allegedly resolved in September of 2011. These facts were taken into consideration in the Town Manager decision (See 5.c of the Exhibit A). However, the building remains abandoned, partially constructed, boarded-up and is not adequately secured.

Testimony during the hearing confirmed that the owners are in default on payment for the property and improvements and that the bank may move forward shortly with foreclosure. The owners are currently trying to sell the property hoping to attract a contractor who can use the existing foundation to build the already approved house. They contend they need at least until the end of April 2012 to sell the property.

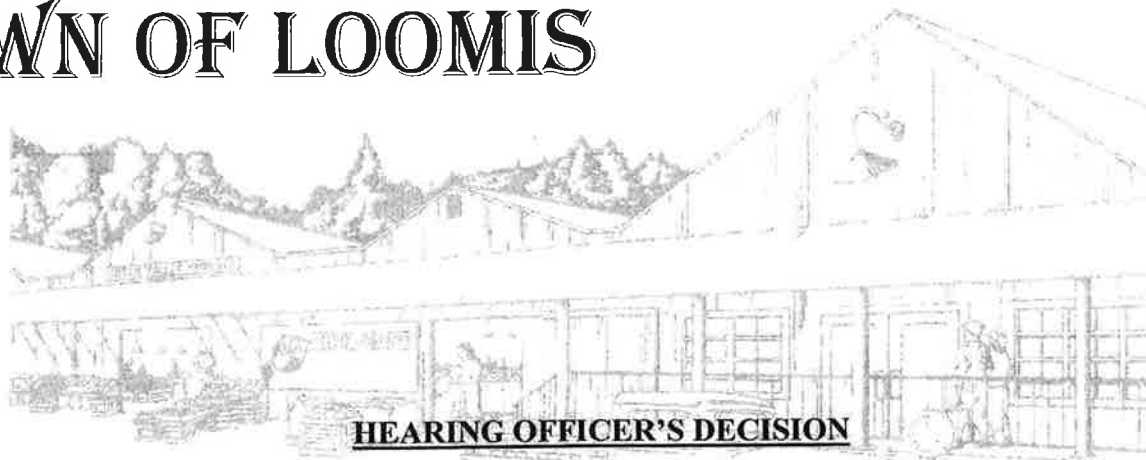
## **HISTORY:**

- **12/12/04** Plans submitted for permit under the name Isak Radinovich
- **1/06/06** Tree Removal Permit issued to Isak Radinovich
- 10/10/06 Grant deed from Rabinovich to Grabers signed (recorded 12/15/06)
- **5/18/07** Permit issued to Isak Radinovich for construction of 7,185 square foot dwelling
- **10/29/08** Complaint from Poppy Ridge HOA that plans have been modified without HOA approval
- **12/14/09** HOA approves plan changes
- **3/01/10** New plans submitted for changes to approved project
- **3/10/10** Plan changes approved
- **3/13/11** Fire substantially damages structure
- **5/10/11** Notice from Town of Loomis to Demolish or Repair structure
- **10/18/11** Notice from Town of Loomis to Abate Nuisance and Order to Show Cause
- **11/07/11** Town Manager Hearing

**REQUIRED ACTIONS:**

Should the Council find that the subject property constitutes a public nuisance pursuant to Town Code Section 7, the Council shall adopt a Resolution declaring such property to be a public nuisance. The Council must also order the abatement by having the property rehabilitated, repaired, removed or demolished by the specified manner and means, and set forth a time for completion of the work by the owner, in no event less than 30 days. Attached is a proposed Resolution for such a declaration.

# TOWN OF LOOMIS



## **HEARING OFFICER'S DECISION**

This constitutes the Decision of the Hearing Officer following a hearing on November 7, 2011, on a Notice to Abate Nuisance and Order to Show Cause issued by the Town of Loomis ("Town") for property located at 5335 Poppy Ridge Drive, Loomis, California, Placer County APN 045-015-043 ("Property"). The Property is owned by Leonid and Mila Gaber ("Property Owners").

Representatives of the Town and the Property Owners appeared at the November 7<sup>th</sup> hearing. John Kintz testified under oath on behalf of the Town, and Dmitry Rocklin testified under oath on behalf of the Property Owners. Additionally, attorney William Chisum appeared on behalf of the Town, and attorney Lawrence Ring appeared on behalf of the Property Owners. Upon presentation of testimony and consideration of evidence submitted at the hearing, the Hearing Officer makes the following findings, conclusions and orders:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Proceedings to abate a nuisance on the Property pursuant to the Town Code section 7.04.01, *et seq.*, were duly commenced by the issuance and service of a Notice to Abate and Order to Show Cause ("Notice") which was served on the Property Owners via mail pursuant to the provisions of the Town Code.
2. The Notice required the Property Owners to abate the nuisance conditions on the Property by October 28, 2011, or in the alternative, appear at an abatement hearing on November 7, 2011.
3. The Property Owners did not abate the nuisance conditions on the Property by October 28, 2011, but opted instead to appear through their representatives at the November 7, 2011 hearing.
4. The Property contains a partially constructed building, or house, which was seriously damaged by a fire in March of 2011, and which is presently partially boarded-up and surrounded by a temporary chain-link fence.
5. The Property is found to be in violation of the following provisions of the Town Code, and the violation of any one of these provisions independently constitutes a public nuisance:

# **EXHIBIT A**

a. The Property contains debris, including construction material and fire damaged materials detached from the building, which have been kept on the Property for an unreasonable period and are visible from a street or roadway in violation of Town Code section 7.04.010D;

b. The Property constitutes an attractive nuisance which is dangerous to children and visible from a street or roadway, especially since the Property's existing temporary fencing is not adequate to secure the Property and to prevent unauthorized entry into the building, in violation of Town Code section 7.04.010E; and

c. The Property contains a building which is abandoned, boarded-up, partially destroyed, or left in a state of partial construction in violation of Town Code section 7.04.010. It was not unreasonable for the building to be in such condition during the time from the fire in March 2011 to the insurance company's coverage decision, which was allegedly issued in September 2011, due to investigation concerns. However, the continued maintenance of the building in such a condition subsequent to September 2011 is, and continues to be, unreasonable.

6. This Decision constitutes the findings and order of the hearing officer pursuant to Town Code section 7.04.060.

7. To the extent the Property Owners fail to comply with the terms of this Decision, it is determined pursuant to Town Code section 7.04.140, and based upon competent sworn testimony, that in fairness and justice there is no way other than demolition reasonably to correct such nuisance as set forth herein.

**IT IS ORDERED THAT:**

1. The Property is hereby declared to be a public nuisance. The conditions and activity contributing to or constituting a public nuisance shall be abated as directed by this Order and in compliance with the Town Code pursuant to section 7.04.020. This Order is made without prejudice to the Town taking any other action or further appropriate action relative to any future condition or activity at or on the Property that might constitute a public nuisance or to any condition or activity that is not the subject of this Order or these proceedings.

2. The Property Owners shall:

a. Within ten (10) days from the date of the abatement hearing, the Property Owners shall:

(i) Remove all debris from within the existing fenced area surrounding the building;

(ii) Insure that the fence surrounding the building is secure; and

(iii) Place temporary barriers on the roadway accessing the building to prevent run-off from causing further erosion.

- b. On or before January 1, 2012, the Property Owners, or their representatives, shall submit a written status report to the Town detailing how they intend to sell, rehabilitate or demolish the building within thirty (30) days of the date of the status report; and
- c. On or before January 31, 2012, the Property Owners shall sell, rehabilitate or demolish the building, and provide the Town with evidence of such sale, rehabilitation or demolition.

3. If the Property Owners do not abate the violations set for the herein in accordance with the above listed timeline, the Town will abate the nuisance, and the cost, including incidental expenses, of abating the nuisance shall be billed to the Property Owners and shall become due and payable thirty days thereafter pursuant to Town Code sections 7.04.070 and 7.04.120.

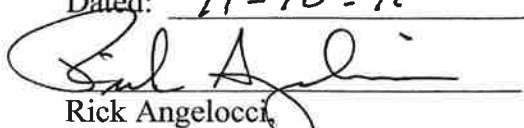
4. This Decision shall be binding on any subsequent owners, lessees, successors in interest or persons who acquire any interest in the Property. The Property Owners shall notify any prospective purchaser, lessee, successor in interest, or person who proposes to acquire any interest in the Property of this Decision prior to entering into any contract or agreement for the sale, lease or transfer of any interest in the Property.

**RIGHT TO APPEAL:**

Pursuant to section 7.04.080, of the Town Code, the Property Owners may appeal the town manager's findings and order, as set forth herein, to the town council by filing an appeal with the town clerk within seven calendar days of the date of service of the town manager's decision. The appeal shall contain:

- A. A specific identification of the subject property;
- B. The names and addresses of all appellants;
- C. A statement of appellant's legal interest in the subject property;
- D. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
- E. The date and signatures of all appellants; and
- F. The verification of at least one appellant as to the truth of the matters stated in the appeal.

Dated: 11-10-11

  
Rick Angelocci,  
Hearing Officer

# HowardRice

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Kenneth A. Neale  
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kneale@howardrice.com

November 16, 2011

VIA E-MAIL (cstroock@loomis.ca.gov)

Crickett Stroock, Town Clerk  
3665 Taylor Road  
Loomis, CA 95650

Re: Appeal of Hearing Officer's Decision - Notice to Abate Nuisance and Order to Show Cause for Property Located at 5335 Poppy Ridge, Loomis, California

Dear Ms. Stroock:

I write to appeal the Town Manager's Findings and Order, dated November 10, 2011, pursuant to Town Code §7.04.080.

**Subject Property:** 5335 Poppy Ridge, Loomis, California.

**Appellants' Names and Addresses:** Leonid and Mila Gaber, 2018 Gulfstream Way, San Leandro, CA 94579.

**Appellants' Legal Interest in Subject Property:** Appellants are the owners of the subject property.

**Action Protested and Basis for Appeal:**

The Gabers appeal the Town Manager's decision declaring the Subject Property a nuisance. The Town Manager made three specific findings of nuisance, each of which the Gabers appeal:

- a. The property contains debris, including construction material and fire damaged materials detached from the building, which have been kept on the Property for an unreasonable period and are visible from a street or roadway in violation of Town Code Section 7.0.010D;

b. The Property constitutes an attractive nuisance which is dangerous to children and visible from the street or roadway, especially since the Property's existing temporary fencing is not adequate to secure the Property and to prevent unauthorized entry into the building, in violation of Town Code section 7.04.010E; and

c. The Property contains a building which is abandoned, boarded-up, partially destroyed, or left in a state of partial construction in violation of Town Code section 7.04.010. It was not unreasonable for the building to be in such condition during the time from the fire in March 2011 to the insurance company's coverage decision, which was allegedly issued in September 2011 due to investigation concerns. However, the continued maintenance of the building in such a condition subsequent to September 2011 is, and continues to be, unreasonable.

The Town Manager's decision requires the Gabers to do the following:

Within 10 days

- Remove all debris from within the existing fenced area.
- Insure that the fence surrounding the building is secure.
- Place temporary barriers on the roadway to prevent run-off from causing further erosion.

By January 1, 2012

- Submit a written status report to the Town detailing how they intend to sell, rehabilitate or demolish the building within 30 days of the status report

By January 31, 2012

- Sell, rehabilitate or demolish the building.

The Gabers disagree with the Town Manager's conclusions and, in any event, the hearing procedure and abatement requirements are not proper.



**There is no debris on the property that is visible from a public street or roadway, as required by Town Code Section 7.0.010D.** Section 7.0.010D declares a nuisance, "Packing boxes, lumber, junk, trash, salvage materials, or other debris kept on the property for an unreasonable period and *visible from a street or roadway.*" (Emphasis added.) The Gabers have conducted a visual inspection of the property. Based on this inspection, it is apparent that nothing that could be considered "debris" is "visible from the street or roadway."

The property is in a private real estate development and Poppy Ridge is a privately maintained road. The Gabers' house sits about 100 yards from Poppy Ridge on an elevated hill. The only aspect of the property that is visible from the closest public road—Rocklin Road—is the chimney of the Gabers' house. Further, even if one were to travel along the private road—Poppy Ridge—to the beginning of the Gabers' private driveway, no debris can be seen on the property. To the extent that there is any debris on the Gabers' property, it is not visible from any public road, and therefore not subject to the Section 7.01.010D.

**The property is not an attractive nuisance.** Under Section 7.04.010E, attractive nuisances include "abandoned, broken or neglected equipment, machinery, refrigerators and freezers, hazardous pools, ponds and excavations" that are "visible from the street or roadway."

First, as described above, the only part of the Gabers' property visible from a public street is the chimney of their house. Nothing in the Town Manager's decision identifies what aspect of the property is an attractive nuisance, but surely the Town Manager did not mean to declare the chimney—on the house's rooftop—an attractive nuisance. Even if the Town Manager did mean to refer to the chimney, it is important to note that the house itself is *completely surrounded* by a chain-link fence (which has been reinforced since the Town Manager issued his decision) and its windows and doors have been sealed by plywood at a cost of over \$16,000. These measures prevent children from gaining access to the house, and the chimney.

Further, the only equipment nearby is on the corner of Rocklin and Poppy Ridge, which is not on the Gabers' property and does not belong to the Gabers, or their contractors. We understand that this equipment may belong to other owners in the development. Compliance with the Town Manager's decision will not be possible because the decision does not specify what property constitutes an attractive nuisance. Accordingly, another

proceeding would be required if the Town intends to declare any specific aspect of the Gabers property to be an attractive nuisance.

**The property has not been abandoned, boarded-up, partially destroyed or left in a state of partial construction for an unreasonable length of time.** The Gabers' property was in the process of being sold when it was significantly damaged by a fire several months ago. The ensuing arson investigation and claim resolution process with the insurance company delayed any opportunities the Gabers have had to rehabilitate the property or transfer title to the property. The Gabers cannot be held liable for a condition constituting a nuisance that they have not been able to address, due to circumstances outside of the Gabers' control.

The Town Manager's decision concedes that it was not unreasonable to leave the building in such condition until the insurance company's investigation was completed in September 2011. It has only been two months since the investigation was completed. Section 7.04.010(L) applies to, among other things, property left in states of partial construction for an unreasonable period of time. Considering that building a house is a months-long process, it cannot possibly be a nuisance to leave a house in a state of partial construction for just over a month, which is how long it has been since the insurance investigation was completed. While it may be that the Gabers' property will become a nuisance if left in its current state for an extended period of time, it has not been long enough to declare the property a nuisance.

**The Town Manager's decision does not give the Gabers sufficient time to abate the nuisance.** Even if the Subject Property were a nuisance, the Gabers are entitled to more time to resolve the problem. The Town Manager's decision allows the Gabers to abate the nuisance by, among other options, selling the property by January 31, 2012. The Gabers are indeed looking to sell the property because, if they do not, it is likely to go into foreclosure. However, it might not be realistic to have a sale completed by January 31, 2012. In the interests of fairness, the Gabers should have until at least April 30, 2012 to abate the nuisance.

**The Town Manager's decision is insufficient to allow the Town to abate the nuisance by demolition.** The Town Manager's decision states that, if the Gabers do not abate the nuisance on their own, "in fairness and justice there is no other way than demolition reasonably to correct such nuisance as set forth herein." This language is consistent with Section 7.04.140 of the Town Code, but plainly inconsistent with the

Crickett Strock, Town Clerk  
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Town Manager's decision, which clearly sets forth alternative means to abate the nuisance. The Town Manager's decision requires the Gabers to remove debris, insure that the fence surrounding the building is secure, and give the Gabers the option of rehabilitating the house. If the Gabers can reasonably abate the nuisance by other means, as the Town Manager's decision concludes, surely the Town can as well. Accordingly, the Town Manager's decision is contrary to Section 7.04.140.


**The Town Manager's nuisance finding violates the Gabers' due process rights.** The Town's Notice to Abate Nuisance and Order to Show Cause did not provide the Gabers with sufficient information to respond to the allegations that their property is a nuisance. As set forth in my November 4, 2011 letter to the Town Manager, the notice did not adequately identify what debris constituted a nuisance or an attractive nuisance; it simply stated that there is debris visible from the street. The Gabers did not find out what debris the Town was concerned with until the hearing before the Town Manager. As noted above, even after receiving the Town Manager's decision, the Gabers still do not know which aspects of the property constitute an attractive nuisance. Consequently, the Gabers have not been given a full and fair opportunity to be heard, and any nuisance finding requires a new hearing before the Town Manager

Sincerely,

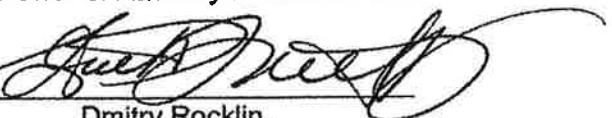


Kenneth A. Neale

DATED: November 16, 2011

By:   
Dmitry Rocklin,  
with Power of Attorney for Leonid Gaber

DATED: November 16, 2011

By:   
Dmitry Rocklin,  
with Power of Attorney for Mila Gaber

Crickett Strock, Town Clerk  
November 16, 2011  
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**VERIFICATION**

I, Dmitry Rocklin, declare:

I have read the foregoing Appeal and know the contents thereof. Based on my personal knowledge and information and belief, I attest that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at SAN FRANCISCO, California on this 16th day of November, 2011.



Dmitry Rocklin

W03 111611-173560001/1664728/v1

# **TOWN OF LOOMIS**

## **RESOLUTION NO. 11-\_\_\_**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS DECLARING PROPERTY LOCATED AT 5335 POPPY RIDGE DRIVE A NUISANCE PURSUANT TO TOWN CODE SECTION 7.04.01, *et seq.***

WHEREAS, Leonid and Mila Graber (“Property Owner”) are the owners of a parcel of real property located at 5335 Poppy Ridge Drive, Loomis, California (“Property”); and

WHEREAS, the Town of Loomis finds that the subject Property contains a partially constructed building, or house, which was seriously damaged by a fire in March of 2011, and which is presently partially boarded-up and surrounded by a temporary chain-link fence; and

WHEREAS, the Town has sought to remedy the conditions on the Property through notices to the Property Owner beginning as early as May, 10, 2011; and

WHEREAS, the Town, on October 18, 2011, issued a Notice to Abate Nuisance and Order to Show Cause; and

WHEREAS, the Property Owner failed to Abate the Nuisance by October 28, 2011 as required by the October 18<sup>th</sup> Notice; and

WHEREAS, the Property Owner’s representatives and Legal Counsel attended and presented evidence at an administrative hearing before the Town Manager on November 7, 2011; and

WHEREAS, at the conclusion of the administrative hearing, the Town Manager issued a written decision finding that conditions constituting a nuisance existed on the Property and ordering the Property Owner to abate the nuisance; and

WHEREAS, the Town properly served the Town Manager’s decision on the Property Owner in compliance with the Town Code provisions, and the Property Owner has filed a timely appeal of the Town Manager’s decision; and

WHEREAS, the Town Council conducted a hearing on the Property Owner’s appeal on December 13, 2011, in accordance with the provisions of the Town Code; and

WHEREAS, the Town finds based upon the record in this matter and the evidence presented at the December 13, 2011 hearing, that the Property is in violation of the following provisions of the Town Code and the violation of any one of these provisions independently constitutes a public nuisance:

a. The Property contains debris, including construction material and fire damaged materials detached from the building, which have been kept on the Property for an

# **EXHIBIT C**

unreasonable period and are visible from a street or roadway in violation of Town Code section 7.04.010D;

b. The Property constitutes an attractive nuisance which is dangerous to children and visible from a street or roadway, especially since the Property's existing temporary fencing is not adequate to secure the Property and to prevent unauthorized entry into the building, in violation of Town Code section 7.04.010E; and

c. The Property contains a building which is abandoned, boarded-up, partially destroyed, or left in a state of partial construction in violation of Town Code section 7.04.010. It was not unreasonable for the building to be in such condition during the time from the fire in March 2011 to the insurance company's coverage decision, which was allegedly issued in September 2011, due to investigation concerns. However, the continued maintenance of the building in such a condition subsequent to September 2011 is, and continues to be, unreasonable and therefore constitutes a nuisance.

WHEREAS, to the extent the Property Owner fails to comply with the terms of this Resolution and Order, it is determined pursuant to Town Code section 7.04.140, and based upon competent sworn testimony, that in fairness and justice there is no way other than demolition to reasonably correct such nuisance as set forth herein since it is not economically or practically feasible for the Town to rehabilitate a private residence given the extensive damage, and demolition of the structure is the only reasonable alternative for the Town to pursue.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED by the Council of the Town of Loomis that:

1. The recitals above stated recitals are true and correct and are incorporated herein;
2. Since the Property is maintained in violation of Town Code section 7.04.010, the Property is declared to be a public nuisance;
3. The Property Owner shall abate the conditions constituting the nuisance in the following manner:
  - a. Within ten (10) days from the date of this hearing, the Property Owner shall:
    - (i) Remove all construction materials and fire damaged building materials not physically attached to the building from within the existing fenced area surrounding the building;
    - (ii) Insure that the fence surrounding the building is secure;
    - (iii) Insure that all windows, doors and any other opening providing access to the interior of the building is completely covered with plywood or other similar material; and

(iv) Place temporary barriers on the roadway accessing the building to prevent run-off from causing further erosion.

b. On or before January 1, 2012, the Property Owner, or their representatives, shall submit a written status report to the Town detailing how they intend to sell, rehabilitate to make it habitable or demolish the building on or before January 31, 2012;

c. On or before January 31, 2012, the Property Owner shall sell, rehabilitate to make it habitable or demolish the building, and provide the Town with evidence of such sale, rehabilitation or demolition;

d. To the extent that the Property Owner sells, or otherwise transfers the Property, the Property Owner shall advise the buyer or transferee, that the buyer or transferee shall rehabilitate to make it habitable or demolish the building within ninety (90) days from the date of sale or transfer.

4. If the Property Owner, or their successor, does not abate the nuisance conditions as set forth herein, and in accordance with the above listed timeline, the Town will abate the nuisance, and the cost, including incidental expenses of abating the nuisance, shall be billed to the Property Owner and shall become due and payable thirty (30) days thereafter pursuant to Town Code section 7.040.070 and 7.04.120, and shall constitute a lien on the Property.

5. This Order and Resolution shall be binding on any subsequent owners, transferees, lessees, successors in interest or persons who acquire any interest in the Property. The Property Owner shall notify any prospective purchaser, transferee, lessee, successor in interest, or person who proposes to acquire any interest in the Property of this Order and Resolution prior to entering into any contract or agreement for the sale, lease or transfer of any interest in the Property.

6. Pursuant to Town Code section 7.04.090, this Order and Resolution shall be final, and any action to judicially review said Order and Resolution must be commenced not later than ninety days after the decision becomes final pursuant to Code of Civil Procedure section 1094.6.

7. This Order and Resolution is made without prejudice to the Town taking any other or further appropriate action relative to any future condition or activity at or on the Property that might constitute a public nuisance or as to any condition or activity that is not the subject of this Order and Resolution or these proceedings.

PASSED AND ADOPTED this 13<sup>th</sup> day of December, 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Mayor

ATTEST:

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Town Clerk