

FILED
CLALLAM CO CLERK

2018 MAR -7 A 9 48

BARBARA CHRISTENSEN

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY**

CLALLAM COUNTY, a political
subdivision of the State of Washington,

Plaintiff,

vs.

BRAD and SUZANNE POUND, husband
and wife,

Defendants

Cause # **18 2 00243 05**

**VERIFIED
COMPLAINT FOR WARRANT OF
ABATEMENT AND DECLARATORY
AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

Two County departments, Community Development and Environmental Health, file this lawsuit in order to enter upon certain real property owned by the Defendants Brad and Suzanne Pound within unincorporated Clallam County known as 313 McDonnell Creek Road, Sequim, WA. This real property is also identified by the Assessor with the following Geographic ID: 043018419080. This Complaint will refer to the Defendant's real property as "the Subject property or "the SP." Entry upon this real property pursuant to a judicially-ordered Warrant of

VERIFIED COMPLAINT
Page 1

MARK B. NICHOLS
PROSECUTING ATTORNEY
FOR CLALLAM COUNTY
223 E. 4th Street-Suite 11
Port Angeles, WA 98362
(360) 417-2301

ORIGINAL



Record Certification. I Certify that the electronic filing is a correct copy of the original, on file with the County Clerk, and was taken under the Clerk's supervision. Clallam County Clerk, by MB Deputy # pages: 9

1 Abatement is necessary to remove, cure and abate numerous "public nuisances" present at the
2 SP, all of which jeopardize the public's health, safety and welfare. The violations listed below
3 are longstanding and are in direct violation of numerous state regulations and county codes.
4 County staff is able to provide this Court with written and photographic evidence of the
5 violations and will do so.

6 **APPLICABLE STATUTES, CODES AND RULES:**

7 *A. State statutes have long defined nuisance and set up enforcement tools in response:*

- 8 1. Since at least 1875 Washington statutes have defined "nuisance" as consisting of
9 "unlawfully doing an act, or omitting to perform a duty, which act or omission either
10 annoys, injures or endangers the comfort repose, health or safety of others, offends
11 decency; or in way renders other persons insecure in life, or in the use of property."
12 RCW 7.48.120.
13
- 14 2. A subset of "nuisance" is "public nuisance," which is a "[a nuisance] which affects
15 equally the rights of an entire community or neighborhood, although the extent of the
16 damage may be unequal." RCW 7.48.130.
17
- 18 3. Any public body or officer may abate a public nuisance. RCW 7.48.220.

19 *B. County Code sections relating to nuisances mimics the state law:*

- 20 4. Initially, and perhaps most importantly, "any violation of [County] regulations,
21 ordinances, code, compilation shall constitute a misdemeanor or civil infraction subject to
22 a monetary penalty" according to RCW 36.32.120(7).
23

- 1 5. The term "civil code violation" is defined at CCC §20.08.010(3) as any "act or omission
2 contrary to an ordinance of Clallam County that regulates or protects the public health,
3 safety, environment, or use and development of land or water... ."
- 4 6. All "civil code violations" are "hereby declared public nuisances" according to CCC
5 §20.08.020(1). The Defendants, as the title owners of the SP, have created, tolerated and
6 authorized various civil code violations at the SP.
- 7 7. The civil code infractions which are allegedly occurring at the SP arise not from
8 violations of Title 20 of the County Code, but instead are arising from daily and
9 continuing violations of County Code provisions listed elsewhere in that Code.
- 10 8. Defendant Brad Pound refused to consent to having County staff enter upon the SP.
- 11 9. This forced the undersigned to apply for and obtain on October 25, 2017 three Search
12 Warrants from the Superior Court.
- 13 10. County staff executed those search warrants on that same date and filed Returns for those
14 warrants on October 31, 2017. Staff took written notes and numerous photographs.

15 **ALLEGATIONS SUPPORTING COMPLAINT**

16 **C. Any junk vehicles present at the SP are unlawful:**

- 17 11. Chapter 19.60 CCC regulates how and when a junk vehicle may be present or stored on
18 private property.
- 19 12. A vehicle holds the status of "junk vehicle" if it satisfies at least three of the four criteria
20 (at least three years old, extensively damaged, apparently inoperable and having no more
21
22
23

value than the scrap in it) listed in the definition of "junk vehicle" at RCW 46.55.010(5) and CCC §19.60.030(4).

13. The maximum number of authorized junk vehicles depends on the size of the real property where they sit.

14. If the property in question is less than 2.50 acres, then the presence of a single junk vehicle is unlawful. For properties larger than 2.50 acres the presence of two or more junk vehicles is unlawful. See CCC §19.60.040(1).

15. The SP contains some 1.31 acres, meaning there can be no junk vehicles lawfully present there.

16. The testimony of McFall, assisted by any pertinent photographs, will reflect the presence at the SP of several sedans that qualify as junk vehicles and make it more likely than not that CCC §19.60.040(1) is being violated at the SP.

17. Also, the RV/trailer being used as an illegal residence satisfies at least three of the four criteria found in RCW and CCC, thus also making them junk vehicles.

18. Furthermore, CCC §19.60.040(1) makes violating these limits of zero or one junk vehicle on a particular parcel a "public nuisance" that can be abated pursuant to this County Code section as well as Ch. 7.48 RCW.

D. Sewage is not being properly handled and disposed of at the SP:

19. The testimony of Environmental Health Specialist Janine Reed (assisted by relevant photographs) will prove it is more likely than not that present at the SP are violations arising from the improper handling and disposal of sewage, a term of art defined at WAC

1 246-272A-0010:

2 “any urine, feces, and the water carrying human wastes, including kitchen, bath,
3 and laundry wastes from residences, buildings, industrial establishments or other
4 places.”

5 20. The related County Code provision is found at CCC §41.20.080(1), which states there
6 must be in place an authorized (approved by Clallam County Environmental Health) on-
7 site septic system [“OSS”] or connection to a public sewer at “Every residence, place of
8 business, or other building or place where people congregate or reside, if not connected to
9 an approved public sewer, shall be connected to an [OSS] approved by the Health
10 Officer” of Clallam County.

11 21. Photographic evidence will show improvised hookups for septic disposal and the
12 presence of a Sani-Can on the SP.

13 22. Sani-Cans and improvised systems with hoses are not lawful OSS.

14 23. Nor is there any record with EH of the pressure system of the OSS at the SP being
15 inspected for at least the last 18 years, although such a system must be inspected annually
16 according to the inspection schedules set out in CCC §41.20.170(1)(a)(i)(B).

17 E. Solid waste is not being properly handled, stored and disposed at the SP:

18 24. “Solid waste” has a precise definition in both WAC and County Code, which reads as
19 follows:
20

21 “Solid waste” or “wastes” means all putrescible and non-putrescible solid and semisolid
22 wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill,
23 sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof,
and recyclable materials.

1 See, for example, CCC §41.10.040(15).

2
3 25. The owner of any real property is “responsible for the legal and satisfactory arrangement
4 for the solid waste handling of all solid waste generated or accumulated on the property.”
5 CCC §41.10.060(1).

6 26. It is a violation of Chapter 41.10 CCC “for any person to dump or deposit or permit the
7 dumping or depositing of any solid waste onto or under the surface of the ground or into
8 the waters of the State except at a facility that is permitted to accept the solid waste.”
9 CCC §41.10.070(1).

10 27. The SP is not a permitted (authorized) solid waste disposal site.

11 28. The quantity of solid waste at the SP is such that there are two trailers completely flat
12 filled with solid waste. Defendant Brad Pound has been offered the opportunity to take
13 that solid waste to the transfer station at no cost to him, but has not done so.

14 29. The amount of garbage on the SP appears to exceed the “no more than 12 cubic feet”
15 exemption from these anti-dumping rules found at CCC §41.10.070(1)(b).

16 30. With respect to violations of CCC Chapter 41.10 the photographic evidence collected by
17 County staff will indicate to the Court that is more likely than not that a large quantity of
18 “solid waste,” what a lay person might call garbage, is sitting on the SP, although the SP
19 is not an authorized site for the disposal and handling of solid waste.
20

21 31. On February 28, 2018 staff observed the SP from the public right-of-way and took
22 photographs, which indicate the code violations and public nuisance continue to exist at
23

1 the SP, e.g., the solid waste is still present there as are a SaniCan and junk vehicles.

2 **PRAYER FOR RELIEF**

3 Plaintiff, Clallam County, hereby incorporates as if stated in full herein the complete text of all
4 prior paragraphs listed above and now seeks the following forms of relief from this Court:

5 1. Plaintiff is entitled to the following Declaratory Relief, specifically a Declaratory Order

6 that:

7 a. Conditions at the SP constitute a "public nuisance" as that term is defined in state
8 law such that Plaintiff is entitled to obtain a Warrant of Abatement;

9 b. Conditions at the SP represent and are repeated and longstanding violations of the
10 various sections of the Clallam County Code, specifically Ch. 19.60, Ch. 41.10
11 and Ch. 41.20 such that the conditions present at the SP constitute a "public
12 nuisance" in accordance with CCC §20.08.020(1).

13 c. Violations of County Code Chapters listed in "b." above and elsewhere in this
14 Verified Complaint have occurred and are currently occurring daily at the SP.
15

16 2. Plaintiff is entitled to the execution by the Superior Court Judge of a Warrant of
17 Abatement pursuant to Ch. 7.48 RCW authorizing the Clallam County Sheriff [or his
18 designated person or department(s)], to enter upon the SP and abate (remove, remedy,
19 cure) all "public nuisances" found to be present at the SP, said costs of abatement,
20 including reasonable attorney's fees, to become a "Special Assessment" against the real
21 property, said "Special Assessment" having pursuant to RCW 36.32.120(10) the same
22

lien priority as ad valorem real estate taxes.

3. Plaintiff is entitled to the execution by the Superior Court Judge of a Warrant of

Abatement pursuant to certain sections of the County Code, specifically CCC

§41.20.250(1) [septic code] and CCC §41.10.140 [solid waste code].

4. Plaintiff is entitled to temporary and injunctive relief in order to enjoin the Defendants

from generating, tolerating, condoning or permitting at the SP from the date of the

injunction any of the “public nuisances” described in this Complaint.

5. Said injunctive relief shall provide this Court with continuing jurisdiction such that any

violation of a valid Injunction enjoining Defendants from certain behavior shall be

brought before the Court on the grounds of possible contempt of court by the Defendants

or one of them.

6. Such other relief as this Court may deem just and equitable.

FILED this 6th day of MARCH, 2018

David W. Almon

DAVID W. ALVAREZ, WSBA #29194

Chief Civil Deputy Prosecuting Attorney

For Respondent, Clallam County

VERIFIED COMPLAINT

Page 8

MARK B. NICHOLS
PROSECUTING ATTORNEY
FOR CLALLAM COUNTY
223 E. 4th Street-Suite 11
Port Angeles, WA 98362
(360) 417-2301

1
2
3 **VERIFICATION:**

4 The undersigned under penalty of perjury pursuant to the laws of the State of Washington
5 do hereby swear or affirm that the facts set forth in this Verified Complaint are true and
6 complete.

7 *On behalf of Clallam County Health and Human Services*

8 Undrey Aspelund

9 3/7/18 Port Angeles
Date and location where signed

10
11 *On behalf of Clallam County Department of Community Development*

12
13 B McFall

14 3/6/18 Port Angeles
Date and location where signed.