



## AGENDA ITEM # 6.3

### REPORT TO CITY COUNCIL

**Report Prepared by: Dawn Bittner**

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**Date:** August 6, 2019

**Subject:** Fence Permit – John Derksen

**Report:** Mayor Tayloe requested this item on the Agenda at Mr. Derksen's request. The following is the list of correspondence, meeting materials and minutes since the Derksen property was declared a public nuisance September 5, 2017.

- September 5, 2017 Council Minutes declaring the Derksen property a public nuisance, which included language regarding a Land Use Permit application for the installation of a privacy fence to be installed no later than May 1, 2018;
- September 5, 2018 letter requesting removal of snowmobile from West Sibley Street, reduce number of recreational vehicles to 3, and park the boat and trailer in the rear yard;
- December 5, 2018 letter requesting removal of snowmobile from West Sibley Street, removal of snowmobiles from Ash Street, and reduce number of recreational vehicles to 3;
- December 14, 2018 response from Mr. Derksen;
- January 31, 2019 letter stating the Derksen public nuisance update was placed on the February 5, 2019 Council Agenda;
- February 5, 2019 Council Report regarding public nuisance update;
- February 5, 2019 Council Minutes;
- June 11, 2019 letter thanking the Derksens for their efforts in removing and screening items and requesting application for a Fence Permit;
- July 2, 2019 draft Council Minutes where Mr. Derksen appeared under Open Forum;
- July 16, 2019 letter requesting application for a Fence Permit.

**Council Action Requested:** Council direction on submission of a Fence Permit Application and fee of \$50 by Mr. Derksen.

**Excerpt of the Minutes from the Special Meeting of the City Council,  
September 5, 2017:**

Consider Adopting an Order Declaring Property to be a Public Nuisance

Mayor Adams opened the public hearing.

City Attorney Erica Heikel indicated the purpose for this meeting was to consider a resolution declaring the property owned by John and Barbara Derksen located at 31116 Ash Street to be a public nuisance.

Dawn Bittner updated the Council on the current conditions at the John & Barbara Derksen property including updated photos which were presented to the Council for review. Ms. Bittner noted that the photos indicate there are still violations on the property.

Kurt Porter from Severson Porter Law Office was present on behalf of John and Barbara Derksen. Mr. Porter explained the word "debris" on the violations list is too general of a term and is asking for an itemized list to clarify what items need to be removed in order for the property to be compliant. Mr. Porter explained that John and Barbara Derksen want to comply and have every intention of working with the City to do so.

Mayor Adams closed the public hearing.

Council discussion ensued regarding the length of time this issue has been ongoing, the screening of snowmobiles, provisions for a fence permit, and a timeline for John and Barbara Derksen to become compliant.

**MAYOR ADAMS MOVED TO ADOPT RESOLUTION 17-30 FINDINGS, CONCLUSIONS AND ORDER OF THE PEQUOT LAKES CITY COUNCIL REGARDING ALLEGED CODE VIOLATIONS AND NUISANCE CONDITIONS AT 31116 ASH STREET WITH AN AMENDMENT TO EXTEND THE COMPLIANCE DATE TO NOVEMBER 1, 2017 AT 11:00 A.M. AND FURTHERMORE, ONCE THIS PROPERTY IS IN COMPLIANCE THE CITY WILL ACCEPT A LAND USE PERMIT APPLICATION FOR THE INSTALLATION OF A PRIVACY FENCE TO BE INSTALLED BY NO LATER THAN MAY 1, 2018. COUNCIL MEMBER SWANSON SECONDED THE MOTION. MOTION CARRIED 5-0.**



September 5, 2018

John R. and Barbara J. Derksen  
31116 Ash Street  
Pequot Lakes, MN 56472

**RE: City of Pequot Lakes  
Potential City Code Violation  
PIN: 291050040230009 and 291050040240009  
31116 Ash Street**

Dear Mr. and Mrs. Derksen:

The City of Pequot Lakes would like to take this opportunity to thank you for your efforts to bring this property into compliance regarding Exterior Storage and Maintenance. However, Exterior Storage issues remain that need to be addressed at the above-captioned property. Because of your past efforts, the City would like to work with you to correct the situation.

Per City Code, the following Exterior Storage issues must be addressed within the next thirty (30) days (by October 5, 2018):

- Remove the snowmobile parked along West Sibley Street and place it in the rear yard with the other two snowmobiles;
- Reduce the total number of Recreational Vehicles (travel trailer and/or snowmobiles) to three (3);
- The boat and trailer shall be parked in the rear yard of the property.

The City Code states in Section 17-3.2 DEFINITIONS:

**Section 17-3.2. DEFINITIONS**

192. **Recreational Equipment.** Play apparatus such as swing sets and slides, sandboxes, poles for nets, boats and trailers not exceeding twenty (20) feet in length, picnic tables, lawn chairs, barbeque stands/grills, and similar equipment or structures but excluding tree houses, swimming

pools, play houses exceeding twenty-five (25) square feet of floor area, or sheds utilized for storage equipment.

193. **Recreational Vehicle.** A motorized vehicle designed and used for recreational purposes and enjoyment and non-motorized vehicles or equipment designed to attach thereto and be drawn or propelled thereby, including, but not limited to, snowmobiles, all-terrain vehicles, boats exceeding twenty (20) feet in length, boat trailers, travel trailers, truck campers, camping trailers, and self-propelled motor homes, and other recreational motor vehicles as defined by Minnesota Statutes, Section 84.90.

The City Code states in Section 17-7.5 EXTERIOR STORAGE:  
Section 17-7.5 EXTERIOR STORAGE

1. Declaration of Nuisance. Excess outdoor storage of materials, equipment and other objects is declared to be a public nuisance because it is unsightly, decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, adversely affects property values and neighborhood patterns and poses a threat to the public health and safety when such objects are visible and accessible to passersby.
2. Standards. Objects stored outside that are visible from public rights of way or neighboring properties are a public nuisance if they are not stored in compliance with the following requirements.
  - D. Boats and recreational vehicles shall be allowed to be parked and/or stored outside a building on private property up to a cumulative total of 7 days per calendar year, except that boats and recreational vehicles less than 30 feet in length stored in the rear yard of a non-riparian lot not less than the applicable setback from any property line are not subject to the 7-day limit established herein if the following standards are satisfied:
    - (1) A maximum of three boats and recreational vehicles less than 30 feet in length may be stored outside in the rear of improved lots only, not less than the applicable setback from any property line or ordinary high water mark of a public water.
    - (2) All boats and recreational vehicles stored outside more than 7 cumulative days per year shall display a current license or watercraft registration if required for such boat or recreational vehicle by the State of Minnesota.
    - (3) For the purposes of this section, multiple recreational vehicles stored on a single trailer less than 30 feet in length shall be considered one recreational vehicle.

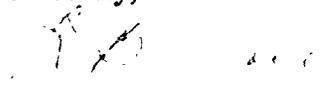
As opposed to initiating formal enforcement action against you for a violation of the City Code, we would like the opportunity to work with you to correct the situation. **We are requesting that by no later than October 5, 2018 you perform all of the actions listed above.**

Failure to comply with the City Code by October 5, 2018, will prompt us to initiate enforcement action up to and including criminal prosecution or other civil legal action to remedy the above-described violations. Alternatively, the City may initiate administrative action to achieve voluntary compliance with the above-referenced City Code provisions without resorting to prosecution or other legal action, which administrative action would include citation(s) and administrative penalties in the amount of \$100.00 per day for each day the violation continues.

Having exterior storage as depicted in these pictures is not only a blight to the rest of the community, it is a health and safety issue that we take very seriously. Please understand our seriousness and commitment to uphold the City Code. We hope you will take this opportunity to work with us and resolve this matter without further enforcement action becoming necessary.

We would appreciate your assistance at remedying the above issued by the specified deadlines. If you have any questions, please contact me at 218-568-6699 or at [dbittner@pequotlakes-mn.gov](mailto:dbittner@pequotlakes-mn.gov).

Sincerely,



Dawn Bittner  
Zoning Specialist

Enclosure: Photographs

C: Planning Commission



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December 5, 2018

John R. and Barbara J. Derksen  
31116 Ash Street  
Pequot Lakes, MN 56472

**RE: City of Pequot Lakes  
Potential City Code Violation  
PIN: 291050040230009 and 291050040240009  
31116 Ash Street**

Dear Mr. and Mrs. Derksen:

I contacted you September 5, 2018 regarding the Exterior Storage issues that needed to be addressed at the above-captioned property. I visited your property today and took the enclosed photographs which indicate no attempt has been made to address these issues.

Per City Code, the following Exterior Storage issues must be addressed within the next fifteen (15) days (by December 20, 2018):

- Remove the snowmobile parked along West Sibley Street and place it in the rear yard with the other two snowmobiles;
- Remove the snowmobiles parked along Ash Street and place in the rear yard with the other snowmobiles;
- Reduce the total number of Recreational Vehicles (travel trailer and/or snowmobiles) to 3.

The City Code states in Section 17-3.2 DEFINITIONS:

**Section 17-3.2. DEFINITIONS**

192. **Recreational Equipment.** Play apparatus such as swing sets and slides, sandboxes, poles for nets, boats and trailers not exceeding twenty (20) feet in length, picnic tables, lawn chairs, barbeque stands/grills, and similar equipment or structures but excluding tree houses, swimming

pools, play houses exceeding twenty-five (25) square feet of floor area, or sheds utilized for storage equipment.

193. **Recreational Vehicle.** A motorized vehicle designed and used for recreational purposes and enjoyment and non-motorized vehicles or equipment designed to attach thereto and be drawn or propelled thereby, including, but not limited to, snowmobiles, all-terrain vehicles, boats exceeding twenty (20) feet in length, boat trailers, travel trailers, truck campers, camping trailers, and self-propelled motor homes, and other recreational motor vehicles as defined by Minnesota Statutes, Section 84.90.

The City Code states in Section 17-7.5 EXTERIOR STORAGE:

Section 17-7.5 EXTERIOR STORAGE

1. Declaration of Nuisance. Excess outdoor storage of materials, equipment and other objects is declared to be a public nuisance because it is unsightly, decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, adversely affects property values and neighborhood patterns and poses a threat to the public health and safety when such objects are visible and accessible to passersby.
2. Standards. Objects stored outside that are visible from public rights of way or neighboring properties are a public nuisance if they are not stored in compliance with the following requirements.
  - B. Where there is a principle or accessory structure, all materials, equipment and other objects shall be stored within a building or fully screened so as not to be visible from adjoining properties, except for the following: laundry drying, recreational equipment, construction landscaping materials and equipment currently being used for construction of the premises, woodpiles, agricultural equipment and materials if these are used or intended for use on the premises, off-street parking except as otherwise regulated herein.

The City Code states in Section 17-7.6 VISUAL STANDARDS:

Section 17-7.6 VISUAL STANDARDS – SCREENING

1. General. No use shall create, maintain or continue any activity or structure which has a strong negative visual impact or offends the morals or violates the standards of the City.

As opposed to initiating formal enforcement action against you for a violation of the City Code, we would like the opportunity to work with you to correct the situation. **We are requesting that by no later than December 20, 2018 you perform the actions listed above.**

Failure to comply with the City Code by December 20, 2018, will prompt us to initiate enforcement action up to and including criminal prosecution or other civil legal action to remedy the above-described violations. Alternatively, the City may initiate administrative action to achieve voluntary compliance with the above-referenced City Code provisions without resorting to prosecution or other legal action, which administrative action would include citation(s) and administrative penalties in the amount of \$100.00 per day for each day the violation continues. You will also be responsible to reimburse the City for any expenses incurred in remedying this violation. This would include any consultant fees or other professional services that City Staff determines is necessary, including but not limited to the City Planner, the City Engineer or the City Attorney, as well as any abatement costs. Any expenses or costs will be assessed against your property.

Please understand our seriousness and commitment to uphold the City Code. We hope you will take this opportunity to work with us and resolve this matter without further enforcement action becoming necessary.

We would appreciate your assistance at remedying the above issues by the specified deadline. If you have any questions, please contact me at 218-568-6699 or at [dbittner@pequotlakes-mn.gov](mailto:dbittner@pequotlakes-mn.gov).

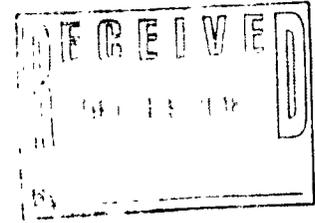
Sincerely,



Dawn Bittner  
Zoning Specialist

Enclosures: Photographs

C: Planning Commission



14 December 2018

City of Pequot Lakes  
4638 Main Street  
Pequot Lakes, MN 56472

**RE: FORMAL DISPUTATION of  
Potential City Code Violation  
PIN #291050040230009/291050040240009  
Dated 5 December 2018**

Dear City of Pequot Lakes:

I am hereby **DISPUTING** any and all of your letter of 5 December 2018 on any and all grounds.

- I. A few short months ago, when we were forced to hire attorneys to ward off your attacks, you were instructed to refrain from communicating with me and instead direct your communications with my attorney, Mr. Porter. Mr. Porter and Attorney Mr. Scott have had many conversations and communications on this matter. Now, you decide to circumvent the legal process with **unwanted** direct communication?
- II. You stated that "no attempt has been made to address these issues." Yet **ANYONE** can see in looking at both sets of photographs that the snowmobiles beside the garage have been removed. The boat that was an issue has been removed. In fact, your photos from 5 December 2018 show your focus has shifted **to** the front yard where ANYONE doing a thorough investigation will NOT find "snowmobiles parked along Ash Street," but in fact will find a Holiday Light Display that has been assembled every year for many, many years. And, **as always**, it will be disassembled and put back to storage a couple of weeks after the First of the year, weather permitting.
- III. The "snowmobile on West Sibley Street" as described in the 5 December 2018 letter, which has been discussed many times before, has been totally dismantled, will **NEVER** run again, and is currently a piece of ART being turned into a FLOWER PLANTER. It has been a planter for well over two years.
- IV. If this city is serious about enforcing this travesty (reduce the total number of Recreational Vehicles... to 3) they had better hire more enforcement people because this would cover 40% to 50% (if not more) of Pequot's population.  
The city needs to be extremely careful when writing ordinances that appear to be aimed at one person, when they have no intention of enforcing it on the entire population.

I know it bothers you to no end, but **I am** a collector of VINTAGE and ANTIQUE SNOWMOBILES, a small but REAL piece of Pequot's History and Culture.

The contents of the front yard will remain and be broken down, as previously stated, after the New Year. The ART DISPLAY/FLOWER PLANTER will remain indefinitely.

I will repeat what my attorney Mr. Porter said in his 29 January 2018 e-mail to Attorney Mr. Scott, "Let me know if there are any questions or concerns. Otherwise, I trust that this will satisfy the City's inexplicably unappeasable fixation on Mr. Derksen's yard."

Sincerely,

A handwritten signature in black ink that reads "John R. Derksen". The signature is written in a cursive style with a large, stylized initial "J".

John R. Derksen

Cc: Councilman Jerry Akerson, Council Person/Elect Cheri Seils, Mayor/Elect James Tayloe



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January 31, 2019

John R. and Barbara J. Derksen  
31116 Ash Street  
Pequot Lakes, MN 56472

**RE: City of Pequot Lakes  
Potential City Code Violation  
PIN: 291050040230009 and 291050040240009  
31116 Ash Street**

Dear Mr. and Mrs. Derksen:

I have placed a Public Nuisance Update on the February 5, 2019 City Council Agenda where I will request direction from the City Council how to proceed with this Potential City Code Violation. The meeting begins at 6:30 PM and will be under the Planning and Zoning Department.

Please feel free to contact me with any questions at 218-568-6699 or at [dbittner@pequotlakes-mn.gov](mailto:dbittner@pequotlakes-mn.gov).

Sincerely,

Dawn Bittner  
Zoning Specialist

C: Planning Commission

## COUNCIL REPORT

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### **Topic: Public Nuisance Update**

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**Background Information:** We have an open enforcement action for the property located at 31116 Ash Street owned by John and Barbara Derksen. Code enforcement began in 2004, with violations being remedied in 2005 and 2011. The current enforcement action was opened in May, 2014 and declared a Public Nuisance September 5, 2017.

The outstanding violation is the number and location of snowmobiles stored outside. The City Code allows three (3) Recreational Vehicles to be stored outside in the rear yard. Mr. Derksen currently has 7 snowmobiles strewn about his yard and a fifth-wheel trailer which he did move meeting the setback.

The City Code states:

#### **Section 17-7.5 EXTERIOR STORAGE**

1. Declaration of Nuisance. Excess outdoor storage of materials, equipment and other objects is declared to be a public nuisance because it is unsightly, decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, adversely affects property values and neighborhood patterns and poses a threat to the public health and safety when such objects are visible and accessible to passersby.
  
2. Standards. Objects stored outside that are visible from public rights of way or neighboring properties are a public nuisance if they are not stored in compliance with the following requirements.
  - D. Boats and recreational vehicles shall be allowed to be parked and/or stored outside a building on private property up to a cumulative total of 7 days per calendar year, except that boats and recreational vehicles less than 30 feet in length stored in the rear yard of a non-riparian lot not less than the applicable setback from any property line are not subject to the 7-day limit established herein if the following standards are satisfied:
    - (1) A maximum of three boats and recreational vehicles less than 30 feet in length may be stored outside in the rear of improved lots only, not less than the applicable setback from any property line or ordinary high water mark of a public water.
    - (2) All boats and recreational vehicles stored outside

more than 7 cumulative days per year shall display a current license or watercraft registration if required for such boat or recreational vehicle by the State of Minnesota.

- (3) For the purposes of this section, multiple recreational vehicles stored on a single trailer less than 30 feet in length shall be considered one recreational vehicle.

Staff sent Mr. and Mrs. Derksen two letters, September 5 and December 5, 2018, requesting they move the snowmobiles along West Sibley Street and Ash Street to the rear yard, and to reduce the total number of Recreational Vehicles (travel trailer and/or snowmobiles) to 3, which would remedy the remaining Code violations.

Mr. Derksen responded December 18, 2018 that the snowmobiles along Ash Street were part of a Holiday Light Display and would be disassembled a couple of weeks after the first of the year, weather permitting. He also stated the snowmobile along Ash Street is a piece of ART being turned into a FLOWER PLANTER. The ART DISPLAY/FLOWER PLANTER would remain indefinitely.

January 31, 2019 Staff verified the snowmobiles remain along Ash Street and West Sibley Street.

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**Excerpt of the Minutes from the regular Meeting of the City Council,  
February 5, 2019:**

Public Nuisance Update

Dawn Bittner informed the Council of the open enforcement action for the property located at 31116 Ash Street owned by John and Barbara Derksen. Ms. Bitter explained that the outstanding violation is the number and location of snowmobiles stored outside. The City Code allows three recreational vehicles to be stored outside in the rear yard. Mr. Derksen currently has seven snowmobiles strewn about his yard and a fifth-wheel trailer which he did move meeting the setback. City staff sent two letters requesting the moving of two snowmobiles along West Sibley Street and Ash Street to the rear yard to reduce the total number of recreational vehicles to three which would remedy the remaining code violations. Mr. Derksen responded to this request on December 18, 2018 noting the snowmobiles along Ash Street were part of a holiday light display and would be disassembled a couple of weeks after the first of the year, weather permitting. Mr. Derksen also noted the snowmobile along Ash Street is a piece of art being turned into a flower planter and would remain indefinitely. Ms. Bittner further noted on January 31, 2019 Mr. Derksen still had snowmobiles along Ash Street and West Sibley Street.

Mayor Tayloe explained that Mr. Derksen's snowmobile planter is decorative and the holiday display is great.

John Derksen, 31116 Ash Street, Pequot Lakes, addressed the Council. Mr. Derksen explained that the first complaint letter he received from the City was because two snowmobiles were brought home from storage for a Halloween display and to be worked on. The second complaint letter from the City was for his Christmas display on the west side of his property. He noted he has three sleds and a sleigh and receives numerous compliments on his holiday display. Mr. Derksen further noted a few snowmobiles are stored in the back yard among the vegetation growth and covered with good covers. He stated that if the City is going to enforce the new code we better hire more staff as this would impact over 50% of the people.

Nancy Malecha requested clarification from Mr. Derksen on the number of snowmobiles and trailers in his yard.

Mr. Derksen stated he has three snowmobiles, a planter, and two snowmobiles buried in the vegetation.

Council Member Pederson questioned if Mr. Derksen will be constructing a fence to screen these items.

Mr. Derksen stated there is no money for a fence.

Council Member Pederson explained the violation process is complaint driven so if the City receives a complaint, we respond accordingly. He further explained to Mr. Derksen that he has the right to bring forth complaints on other properties.

Ms. Bittner clarified that Mr. Derksen has complied with the other violations on his property and the remaining items are the number of recreational vehicles stored outside.

A consensus of the Council agreed to give Mr. Derksen until Memorial Day 2019 to become compliant with the City Code.



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June 11, 2019

John R. and Barbara J. Derksen  
31116 Ash Street  
Pequot Lakes, MN 56472

**RE: City of Pequot Lakes  
Potential City Code Violation  
PIN: 291050040230009 and 291050040240009  
31116 Ash Street**

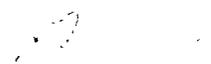
Dear Mr. and Mrs. Derksen:

We would like to take this opportunity to thank you for your efforts in removing and screening items you are storing outside. Upon recent inspection we documented you have provided adequate screening of these items in the southeast corner of your lot. However, the fence was constructed without a permit.

Please complete the enclosed Land Use Permit Application and return to City Hall no later than June 18, 2019. The fee for a Fence Permit is \$50. If we do not receive the completed application by June 18, 2019, the After-the-Fact fee is 5 times the base fee with a minimum penalty of \$300.

Please feel free to contact me with any questions at 218-568-6699 or at [dbittner@pequotlakes-mn.gov](mailto:dbittner@pequotlakes-mn.gov).

Sincerely,

  
Dawn Bittner  
Zoning Specialist

Enc.

C: Planning Commission

**Excerpt of the Minutes from the regular Meeting of the City Council, July 2, 2019:**

Open Forum

John Derksen, 31116 Ash Street, Pequot Lakes, addressed the Council. Mr. Derksen received a letter from the City to thank him for erecting a fence for screening and he is being charged \$50 for a permit for a fence he was ordered to do. Mr. Derksen would like the fee waived and he would like a letter from the City Council stating this issue is done.



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July 16, 2019

John R. and Barbara J. Derksen  
31116 Ash Street  
Pequot Lakes, MN 56472

**RE: City of Pequot Lakes  
Potential City Code Violation  
PIN: 291050040230009 and 291050040240009  
31116 Ash Street**

Dear Mr. and Mrs. Derksen:

As outlined in my letter of June 11, 2019, the fence you constructed to provide screening required a Land Use Permit. Please complete the enclosed Land Use Permit Application and return to City Hall no later than July 24, 2019. The fee for a Fence Permit is \$50. If we do not receive the completed application by July 24, 2019, the After-the-Fact fee is 5 times the base fee with a minimum penalty of \$300.

Please feel free to contact me with any questions at 218-568-6699 or at [dbittner@pequotlakes-mn.gov](mailto:dbittner@pequotlakes-mn.gov).

Sincerely,

Dawn Bittner  
Zoning Specialist

Enc.

C: Planning Commission