

City of Merced
BUILDING AND HOUSING
BOARD OF APPEALS
Agenda

APPEAL HEARING

Assisted Listening Devices Available
Please Contact the Recording Secretary

CALL TO ORDER

Merced City Council Chambers
Wednesday, October 24, 2018
5:00 p.m.

ROLL CALL

S P E A K E R S

Please be brief and to the point - preferably 3 to 5 minutes.

Max Time Limit prior to Agendized items: 15 minutes. Once the maximum has been reached, remaining speakers will be asked to wait until the end of the meeting to make their comments.

For further information on citizen participation and placing an item on the Building and Housing Board of Appeals Agenda, please contact Inspection Services at 209-385-4773.

THE PURPOSE OF THE BUILDING AND HOUSING BOARD OF APPEALS, CITY OF MERCED, CALIFORNIA

In order to hear and decide appeals of orders, decisions, or determinations made by the Chief Building Official relative to the application and interpretation of the Merced Municipal Code, including all Building Code, Housing Code, Administrative Code, Electrical Code, Mechanical Code, Plumbing Code, Fire Prevention Code, and Abatement of Dangerous Buildings Code adopted by reference, there shall be and hereby is created a Building and Housing Board of Appeals, consisting of five (5) members to be appointed by motion of the City Council adopted by at least five (5) affirmative votes, at least three (3) of whom shall be registered or licensed professionals in the trade of design, engineering, construction, or inspection of buildings, all of whom are qualified by experience and training to pass upon matters pertaining to building construction, engineering, or fire inspection. In addition thereto, the Chief Building Official shall be an ex officio member, shall act as Secretary to the Board, and shall have a voice, but no vote or authority to make or second any motion upon any matter before the Board. The Board shall adopt reasonable rules and regulations for conducting its hearings and shall render all of its decisions and findings in writing. The Board shall hold office at least once a year, or as called for by a majority of the members of the Board, or as requested by the Chief Building Official. The decision of the Board shall be final and conclusive on all matters decided therein. Upon receipt of the Board's written decision, the Chief Building Official shall proceed in accordance therewith.

BUILDING AND HOUSING BOARD OF APPEALS PROCESS, RIGHT TO APPEAL

For clarification purposes, the applicable subsection of the Health and Safety Code section is repeated.

Section 18945: (a) "Any person adversely affected by any regulation, rules, omission, interpretation, decision, or practice of any state agency, respecting the administration of any building standard may appeal the issue for resolution to the Commission." (Board)

APPEALS PROCESS

(1) Appellant must submit grievances, in writing, to the Chief Building Official; (2) Chief Building Official will have 14 business days to review and resolve grievances with appellant; (3) If appellant disagrees with the decision of the Chief Building Official, appellant can request an appeal, in writing, to the Chief Building Official within 14 business days; (4) Chief Building Official, as Secretary of the Board, must notify Board members of request for appeal, and schedule appeal within 30 calendar days; (5) Board of Appeals will review case presented by appellant and vote by majority, either in favor or against the appellant; (6) If ruled against, the appellant has the right to appeal to the City Council.

BUILDING AND HOUSING BOARD OF APPEALS MEETINGS

The Committee is interested in your views and wants to hear them. The Agenda for the meeting is posted for public review by the City Clerk's Office at least 72 hours prior to the meeting.

BUILDING AND HOUSING BOARD OF APPEALS AGENDA

Page 2

October 24, 2018

1. COMMUNICATIONS

At this time, any member of the audience may comment on any matter which is not listed on the agenda.

2. ITEMS

2.1 **Appeal Hearing – Phillip Reiner (owner) 636 W. Main Street: Notice and Order to Repair or Abate**

3. ADJOURNMENT

SUBJECT: Appeal Hearing – Phillip Reinero (owner) 636 W. Main Street: Notice and Order to Repair or Abate

REPORT IN BRIEF

This item considers the appeal of the Notice and Order to Repair or Abate for the property at 636 W. Main Street owned by Phillip Reinero.

RECOMMENDATION

Building and Housing Board of Appeals – Adopt a motion denying the appeal filed by Phillip Reinero and therefore upholding the Notice and Order to Repair or Abate posted by the Chief Building Official on July 12, 2018 for the property located at 636 W. Main Street, Merced CA, 95348.

ALTERNATIVES

1. Deny the appeal as recommended by staff
2. Modify conditions of the appeal
2. Continue to a future meeting.

AUTHORITY

Section 18945: (a) “Any person adversely affected by any regulation, rules, omission, interpretation, decision, or practice of any state agency, respecting the administration of any building standard may appeal the issue for resolution to the Commission.” (Board)

DISCUSSION

On July 21, 2017, a permit for engineered shoring of wall between the buildings located at 630 W. Main that was destroyed by fire and the property in question at 636 W. Main was issued. The shoring was installed and final inspection performed September 12, 2017. On December 20th, 2017, it was brought to the attention of City that the front of the building at 636 W. Main Street was deteriorating. Investigations and reporting were initiated by the City and on July 12, 2018 it was determined that the structure in question was deteriorating to the point of either needing to be repaired or demolished and a Notice and Order to Abate or Repair was issued.

On August 3, 2018, an appeal was filed by property owner of 636 W. Main Street, Phillip Reinero. The Building and Housing Board of appeals met at a special meeting on October 4th, 2018 and set the appeal hearing for October 24th at 5 PM.

ATTACHMENTS

1. Notice and Order to Repair or Abate
2. Request for Appeal Hearing



LEGAL NOTICE AND ORDER TO REPAIR OR ABATE

Date: July 12, 2018

Nuisance Property: 636 West Main Street
Merced, CA 95340

Delivered Via Posting on Nuisance Property and First Class Mail to the Known Interested Parties Below:

Case #: 17-00002380

Philip Reinero

Merced, CA 95340

ADDITIONAL MAILING ADDRESS:

Philip Reinero

Merced, CA 95348

Courtesy Copy to:

Corbett Browning

Merced, CA 95348

TO All Interested Parties:

RE: PROPERTY LOCATED AT 636 W. MAIN STREET, MERCED, CA/A.P.N. 031-134-003

This Legal Notice and Order to Repair or Abate ("N&O") is issued pursuant to the California Health and Safety Code ("H&S") section 17980.6. The structure identified herein and located on the real property herein described on Exhibit A is determined to be a dangerous building pursuant to the 1997 Uniform Code for the Abatement of Dangerous Buildings (UCADB) and the Merced Municipal Code ("MMC"). The following sections of the 1997 UCADB and MMC are applicable to the property. The following unlawful conditions have been identified at the Nuisance property on or around July 12, 2018 (this may not be an exhaustive list of all violations and the City retains the right to identify further violations as they are discovered):

UCADB Section 302.4- Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location. (See also MMC section 8.40.070 B, F, V.)

UCADB Section 302.5-Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property. (See also MMC section 8.40.070 B, F, V.)

UCADB Section 302.13 - Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by building regulations of this jurisdiction, as specified in the Building or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings. (See also MMC section 8.40.070 B, F, V.)

UCADB Section 302.17 - Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence. (See also MMC section 8.40.070 B, F, V.)

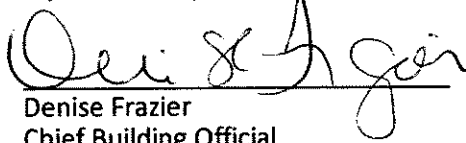
Pursuant to the UCADB and the MMC, the building on the Nuisance Property is dangerously substandard and constitutes a public nuisance. Therefore, the Chief Building Official of the City of Merced has determined that the structure identified herein must be repaired or demolished. Therefore, pursuant to H&S, § 17980.6, you are hereby ordered to repair or abate all code violations on the Nuisance Property, including, but not limited to, all unlawful conditions identified herein. During this time, the structure shall remain vacant and secured. Additionally, the structure shall be assessed by a structural engineer for safety.

Work to abate these unlawful conditions must begin by August 11, 2018 ("Compliance Initiation Deadline"). For repair, plans shall be submitted and approved, with work commencing no later than the Compliance Initiation Deadline. **All repairs must be completed by September 10, 2018 ("Compliance Deadline").** If demolition of the structure is going to occur in lieu of repair, the required demolition and air quality permits must be secured and demolition shall be completed by the Compliance Initiation Deadline.

The legal consequences for failure to initiate rehabilitation and correct the unlawful conditions identified above by the Compliance Deadlines may include administrative fines, criminal prosecution, and civil remedies such as injunctions, penalties, and an application for the appointment of a receiver over the Nuisance Property. Furthermore, you will be held liable for all costs, fees, and expenses, including all inspection costs, investigation costs, enforcement costs, abatement costs, court costs, litigation expenses, prosecution expenses, attorneys' fees, and administrative expenses incurred by the City in inspecting, identifying, investigating, enforcing, prosecuting, and abating all unlawful conditions on the Nuisance Property.

Per section 401.2:5 of the 1997 UCADB, be advised (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the board of appeals, provided the appeal is made in writing as provided in the 1997 Uniform Code for the Abatement of Dangerous Buildings and filed with the building official within 30 days from the **date of service** of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

If you have any questions regarding this Notice & Order, you may contact the undersigned.



Denise Frazier
Chief Building Official
City of Merced (209) 384-5781

cc: City of Merced Code Enforcement Task Force, City of Merced 678 W. 18th Street, Merced, CA 95340

PROOF OF SERVICE

I, Kenneth Bogle, declare as follows:

I am over the age of 18 years old. I served copies of the Notice and Order via certified mail, postage prepaid, return receipt requested on July 13, 2018, to the addresses listed below and to the lien holders listed in Exhibit B attached hereto.

Philip Reinerio

██████████
Merced, CA 95340

Philip Reinerio

██████████
Merced, CA 95348

Corbett Browning

████████████████████
Merced, CA 95348

In addition, I personally posted a copy of this Notice and Order on the property located at 636 West Main Street, Merced, CA on July 13, 2018.

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

Date: _____

BY: _____

Kenneth Bogle, Community Services Officer, City of Merced

EXHIBIT A

Legal Description: Lots 9 and 10, in Block B, according to map entitled "Supplemental Map to Town of Merced", recorded March 4, 1889 in Book 1 of Maps, Page 12, Merced County Records.

EXHIBIT B

Estate of Shirley Ann Reinero
c/o Keith C. King


Merced, CA 95340

State of California
Franchise Tax Board
Special Procedures Section
P.O. Box 2952
Sacramento, CA 95812-2952

City of Merced
Finance Department
678 W. 18th Street
Merced, CA 95340

State of California
Employment Development Department
Lien Group, MIC 92G
P.O. Box 826880
Sacramento, CA 94280-0001

Estate of Theodore B. Reinero
c/o Keith C. King


Merced, CA 95340

County of Merced
Revenue and Reimbursement
2222 M Street
Merced, CA 95340

Internal Revenue Service
P.O. Box 145585, Stop 8420G
Cincinnati, OH 45250-5585

State of California
California Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, CA 94279-0055

1 CORBETT J. BROWNING #143103
2 LAW OFFICES OF
3 ROBBINS, BROWNING, GODWIN & MARCHINI
4 700 Loughborough Dr., Suite D
5 P.O. Box 2067
6 Merced, CA 95344-0067
7 Telephone: (209) 383-9334
8 Facsimile: (209) 383-9386

9 Attorney for Appellant: Phillip Reinero

10 BEFORE THE BOARD OF APPEALS OF THE CITY OF MERCED

11 PHILLIP REINERO,)
12)
13 Appellant.)
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**APPEAL OF NOTICE AND ORDER TO
REPAIR OR ABATE**

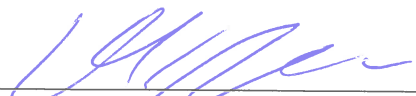
Appellant PHILIP REINERO (hereinafter referred to as "APPELLANT") is and was at all times herein mentioned the rightful owner of 636 W. Main Street, Merced, California (hereinafter referred to as "SUBJECT PROPERTY") and entitled to ownership and alternatively use of SUBJECT PROPERTY.

APPELLANT submits this appeal from the Notice and Order to Repair or Abate at least in part, and based on information and belief, on the basis that the condition of the SUBJECT PROPERTY was caused by the City of Merced's conduct, including, but not limited to, unnecessary and unreasonable trenching of the roof, excavation, maintenance and securing the SUBJECT PROPERTY, preventing APPELLANT'S entrance.

APPELLANT hereby requests that the City of Merced set aside the Notice and Order to Repair or Abate or alternatively, pay for and conduct Abatement and Demolition, at its cost, to the SUBJECT PROPERTY, and pay APPELLANT for the destruction to APPELLANT'S real and personal property.

DATED: August 3, 2018

ROBBINS, BROWNING, GODWIN & MARCHINI

By 
CORBETT J. BROWNING, Attorney for
Appellant Above-Named

1 (VERIFICATION BY ATTORNEY- 446, 2015.5 CCP)

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3 STATE OF CALIFORNIA, COUNTY OF MERCED:

4 I am an attorney at law admitted to practice before all courts of the State of California and
5 have my office in Merced County, California, and am the attorney for Appellant Phillip Reinero in
6 the above-entitled action or proceeding and for that reason Affiant makes this Verification on
7 behalf of Appellant Phillip Reinero; that I have read the foregoing **APPEAL OF NOTICE AND**
8 **ORDER TO REPAIR OR ABATE** and know the contents thereof; and I certify that the same is
9 true of my own knowledge, except as to those matters which are herein stated upon my information
10 or belief, and as to those matters I believe them to be true.

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

13 Executed on August 3, 2018, at Merced, California

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18 CORBETT J. BROWNING

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(PROOF OF SERVICE- C.C.P. §1013(a), C.R.C. 2003(3), 2005(i))

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF MERCED)

I declare that I am employed in the County of Merced, State of California. I am over the age of eighteen (18) years and not a party to the within entitled cause. My business address is 700 Loughborough Drive, Suite D, Merced, CA 95348.

On August 3, 2018, I served the foregoing document(s) described as:

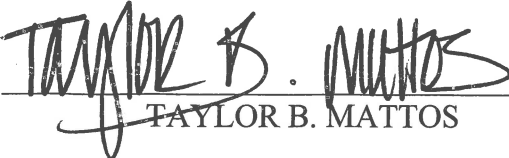
APPEAL OF NOTICE AND ORDER TO REPAIR AND ABATE

on each person or entity identified below by the method(s) indicated below:

City of Merced
ATTN: Denise Frazier, Chief Building Official
678 West 18th Street
Merced, California 95340

BY MAIL: I deposited such envelope in the mail at Merced, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on August 3, 2018 at Merced, California.



TAYLOR B. MATTOS