
MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Cameron Dean, Planning Director
Through: William Homka, City Manager
Date: February 27, 2024
Re: Downtown Nuisance Abatement: 452 Bayview Avenue and 111 Blue Fox Alley

SUMMARY: The City has received a nuisance complaint regarding two restricted deed properties Downtown. Both present a safety hazard, but their restricted deed status complicates the nuisance abatement procedure. Staff is seeking guidance from Council for how to proceed.

PREVIOUS COUNCIL ACTION: None

BACKGROUND: On September 18, 2023 the City received a nuisance complaint regarding two abandoned buildings on the same block downtown.

Both are restricted deeds, which exempt the properties from Title 8 zoning code (8.12.010 (E)). Title 8 governs allowable uses of the property, for example the number of residential units the owner may construct, and associated requirements, like parking and setbacks. If the property is later sold and the deed becomes unrestricted, it will become subject to zoning.

Such properties are not exempt from nuisance code, which regulates conditions endangering public health, comfort and safety (11.08.010(A)(2)). Nuisances include abandoned equipment, excessive noise, defective building exteriors, etc. However, as discussed in the attached memo from the City Attorney, the scope of a municipal government's authority to enforce their nuisance codes on restricted deeds is currently unresolved.

The City's nuisance enforcement is complaint driven and follows a process defined in code. Upon receiving a complaint, the City investigates and if warranted notifies the property owner of the violation. The owner then has an opportunity to complete any required work themselves before the City proceeds to abate the nuisance. If the City must abate the nuisance, it charges the cost of doing so to the owner by placing a lien upon the property. This method of cost recovery is likely not possible in this case because the properties are restricted deeds.

Apart from the two lots being discussed, there are 24 other restricted deed properties Downtown. Based on a visual survey there are:

- 2 abandoned buildings with possible safety issues in addition to the lots being discussed
- 8 vacant lots; empty or used for storage
- 14 intact structures; including both houses and permanent storage structures like shipping containers

DISCUSSION: After receiving the complaint, Planning Staff immediately contacted the owners of both properties. Everyone contacted has been cooperative and understands the City's safety concerns. If one of the buildings were to harm someone or damage their property, the victim may have a viable claim for damages against the owner of the building.

Staff from the Public Works, Public Safety, Fire and Planning departments assessed both properties on October 30, 2023 and agreed that they present a serious safety hazard to the public and neighboring properties. The block is relatively dense, and if either building continues to collapse it will likely spill over onto a neighbors' property. Photos from the site visit are included in the attachment.

452 Bayview Avenue: A one-story building adjacent to the complainant's home. It has a large hole in one side and is leaning toward the complainant's home about six feet away.

After being notified of the complaint, the owner engaged a contractor to demolish the building and received a demolition permit on November 28, 2023.

111 Blue Fox Alley: A two-story building located in the middle of the block with two other buildings on the same lot. There is serious structural damage and much of the interior is exposed to the elements. Staff believes the only viable way to safely abate the nuisance is to demolish the building.

This property is winding through the probate process, where it is expected to remain for some time. Staff contacted the presumed heirs, who do not currently live in Unalaska. They expressed concern at the harm the building may cause as it continues to decay, but after consultation with their attorney do not believe they have any right to improve the property until the probate process completes.

Planning Staff consulted with Bureau of Indian Affairs (BIA) Real Estate Services and Rights Protection and formally requested the right to address the hazard caused by the building. After a historical and cultural resource review, BIA agreed on December 12, 2023 that the City should act. BIA's approval specifically addresses the two-story building, not the other buildings on the lot, which are in better condition. Staff contacted the presumed heirs, who indicated they supported the City's efforts to remediate the property but were concerned about the possible expense.

While nuisance code includes many conditions that may make a property disruptive or undesirable to neighbors, BIA's approval was only granted because this building presents a safety threat. If the nuisance did not meet that level, the City would likely be unable to intervene.

Due to the size of the building, proximity to other structures, and potential for hazardous materials, DPW estimates the cost of demolition at \$98,000. Approximately \$34,000 of that is landfill fees.

ALTERNATIVES: Staff and the City Attorney have identified four paths forward:

1. Do nothing. If harmed by the subject property, the neighbors' recourse would be a civil claim against the owners. The City has basically no legal liability if it allows the buildings to remain.
2. Enter into an agreement with the expected future owners in which they will reimburse the costs of abatement should they eventually become the owners. The agreement would be completely voluntary, and besides civic responsibility, the only incentive for the future owners would be the potential that the City may not pay to abate the nuisance and allow it to remain if they do not agree.
3. Abate the nuisance with no means to recover the cost. The demolition work would be contracted through competitive bid following the City's procurement policy. If this alternative is selected, Staff will present Council with a budget amendment at the next regular meeting.

One concern with this option is the precedent it may set. The City is only allowed to act on a restricted deed in this instance because there is an imminent safety concern. Paying for the abatement may create the expectation that the City will do the same in other cases, possibly discouraging property owners from dealing with decaying buildings themselves before they become hazardous. As noted in Background, two other buildings were identified in the course of investigating this complaint that may meet the same safety standard. However, there are relatively few restricted deed properties remaining in Unalaska.

4. Attempt to follow the standard nuisance procedure and recover the cost of abatement. It is currently unclear whether the City would be overstepping its authority in doing so, and the City Attorney does not recommend this option. If challenged this could become a test case for the scope of municipal authority on Native Allotments with significant interest and ramifications beyond Unalaska.

Additionally, the City may elect to waive landfill fees for the disposed materials, expected to be a large part of the total demolition cost for both buildings. Doing so would effectively shift some of the cost of abatement to the Solid Waste Proprietary Fund.

FINANCIAL IMPLICATIONS: Financial impacts depend on which alternative the City chooses and are discussed above.

LEGAL: The City Attorney has been involved with this issue from the beginning. A memo discussing the legal situation is attached.

STAFF RECOMMENDATION: Staff requests a directive to the City Manager to pursue one of the above alternatives.

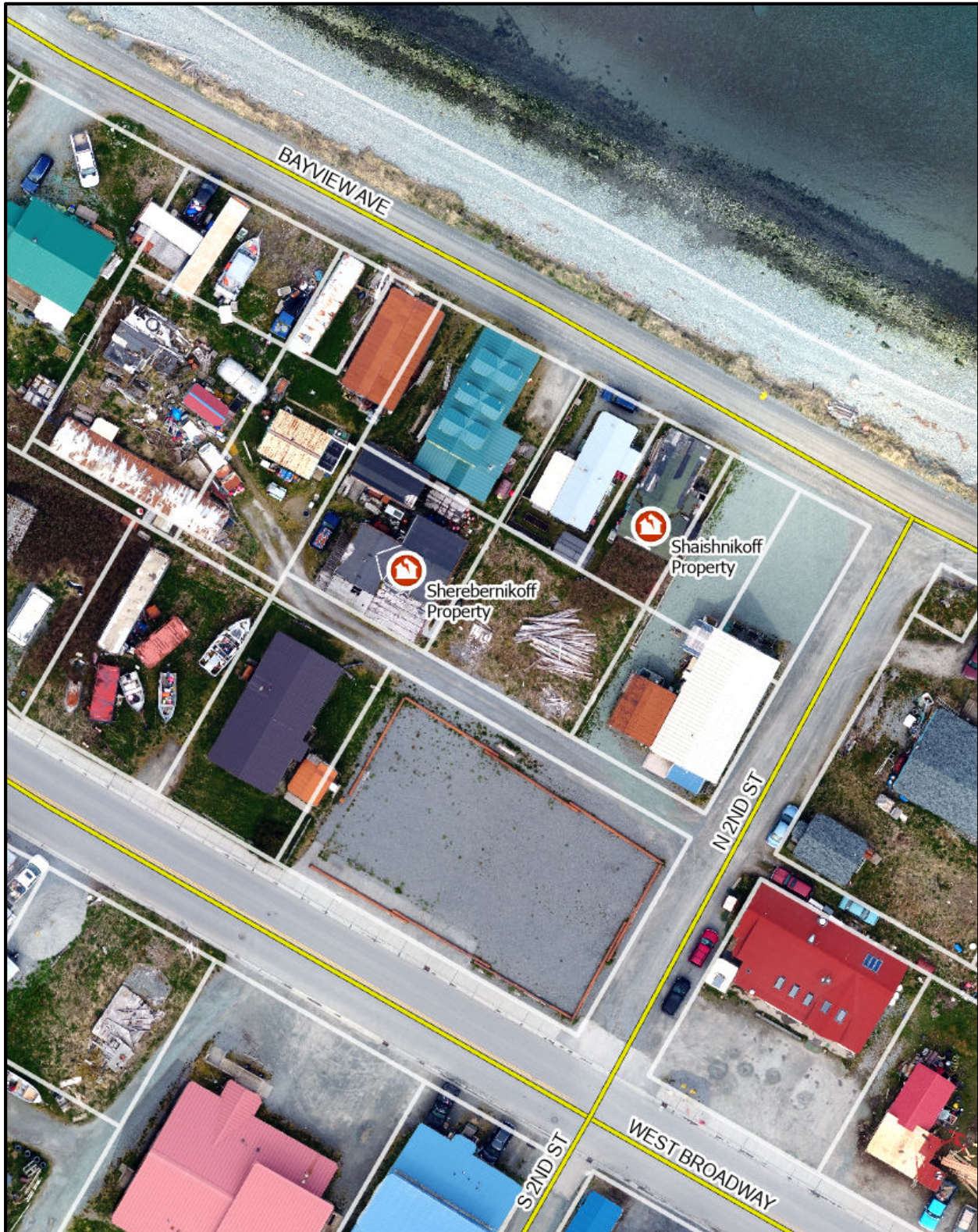
PROPOSED MOTION: I move to direct the City Manager to: _____.

CITY MANAGER COMMENTS: This is a difficult situation due to safety concerns and limited cost recovery options due to the restricted deeds. Staff presented four alternatives above, each with pros and cons. This is a Council decision and staff requests direction in moving forward.

ATTACHMENTS:

- Site Map and Photos
- Memo from City Attorney

Derelict Buildings on Restricted Deeds: Overview





Derelict Buildings on Restricted Deeds:

Site 1: Sherebernikoff Property, 111 Blue Fox Alley



Details:

- In probate, presumed future owners Nicole Sherebernikoff and Ted Sherebernikoff Jr.
- Sought and attained BIA approval for removal action
- Building in extreme state of decay:
 - Exterior wall cladding torn off
 - Multiple missing windows
 - Blowing insulation
 - Severe deformation of first floor walls













Derelict Buildings on Restricted Deeds:

Site 2: Shaishnikoff Property, 452 Bayview Ave.



Details:

- Owner has agreed to remove building and received demolition permit
- Building in extreme state of decay:
 - Exterior wall cladding torn off
 - Partial collapse on two building faces
 - Multiple missing windows
 - Severe wood rot and missing exterior panels
 - Very close and leaning toward neighbor's house

