



December 7, 2017

Dana Dean
Law Offices of Dana Dean
283 East H Street
Benicia, CA 94510

Subject: 720 East H Street (Yuba Buildings)

Dear Ms. Dean,

I write to follow up on my October 5, 2017 letter to you wherein I informed you of the City's intention to engage independent consultants to prepare a Historic Structures Report ("HSR") in response to your client's refusal to provide such a report in the first instance. At its October 17, 2017, meeting the City Council once again indicated the importance of and reiterated its request for an HSR to assist it in conducting the rehearing on the emergency demolition permit sought by Amports. Pursuant to the Benicia Municipal Code, Chapter 1.44 Appeals, your client's rehearing entails the reconsideration of the City Council's decision issued on review of the appeal of the Building Official's administrative approval of the permit, which means that the call for review rehearing shall consist of a new (i.e., de novo) appeal hearing regarding the requested permit and its attendant CEQA determination. And pursuant to Public Resources Code Section 21160 and CEQA Guidelines Section 15060, the City has the right to request information needed for and duty to conduct the required preliminary CEQA review before reconsidering whether to approve such a permit.

While you did not formally respond to my October 5th letter, your testimony during the October 17th City Council meeting suggested that Amports would not cooperate with or allow City staff or its consultants to access the Yuba Buildings to conduct the site visit/inspection needed to prepare the requested HSR. For the reasons noted herein, I respectfully request that Amports reconsider and voluntarily grant the City and its consultant(s) access to the Yuba Buildings for this limited purpose. Of course, the City will work collaboratively with you to schedule any such site visit for a mutually convenient day/time. Absent Amports' voluntary consent and cooperation, staff will be forced to explore what appear to be very limited options: (1) prepare and file pleadings to seek/secure a court-ordered administrative inspection warrant to enable the site visit needed to prepare an HSR; or (2) prepare for and conduct the rehearing without the information requested by the City Council.¹

¹ It appears there may be a third alternative as the consultants at Page and Turnbull that the City is working with to discuss a plan for the requested HSR recently informed the City that the structural engineer they originally intended to work with on the HSR has been retained by Amports. This led the City to wonder whether Amports has already reconsidered and decided to prepare and submit the long-requested HSR. If so, please let me know as the City and its consultants would like to discuss

Given the Yuba Buildings are recorded historical landmarks and the fact that the matter at hand is a request by a private property owner for a discretionary demolition permit, I'm presently hesitant to recommend the confrontational and costly pursuit of Option 1 and, without the information sought by the City Council, would have to seriously consider recommending the denial of the requested emergency demolition permit without prejudice under Option 2. These tentative positions have been further and significantly influenced by my understanding that Amports has no current plan to use or otherwise develop the vacant project site and that prior site security concerns have abated since Amports recently and dutifully employed security guards at and improved fencing around the project site and Yuba Buildings.

In sum, because the matter at hand entails your client's application for an emergency demolition permit (meaning your client has the burden of persuading the City on the application), absent your client's cooperation staff likely will recommend that the City Council deny the application. Thank you in advance for your consideration of these issues, I look forward to your client's response and discussing a reasonable and expeditious path forward to the rehearing with you. I would appreciate a response on or before December 15th as we have tentatively scheduled the rehearing for the City Council's January 16, 2018 meeting.

Sincerely,



Shawna Brekke-Read

Community Development Director

Cc: City Attorney

City Manager

Appellants (Jon Van Landschoot, Toni Haughey, Tim Reynolds and Gilbert Von Studnitz)

the scope of the HSR and join Amports' engineer on any site visit(s) he/she may make to facilitate the City's peer review of any such HSR to be prepared/submitted by Amports.