

RESOLUTION NUMBER 21-058

**RESOLUTION ORDERING THE ABATEMENT OF SEVERAL HAZARDOUS BUILDINGS
LOCATED IN THE BROADMOOR VALLEY MOBILE HOME PARK IN THE CITY MARSHALL,
MINNESOTA**

WHEREAS, the Broadmoor Valley mobile home park, located in the City of Marshall on real property legally described on Exhibit A attached hereto, Lyon County PID's 27-604126-0 and 27-604128-0 (the "Property"), contains numerous manufactured homes owned by Schierholz and Associates, Inc., a Colorado corporation whose Minnesota registered office address is 100 Lilac Drive, Marshall, MN 56258 and whose taxpayer address is P.O. Box 60969, Colorado Springs, CO 80906; and

WHEREAS, numerous individuals own manufactured homes that are located on the Property leased from property owner Schierholz and Associates, Inc.; and

WHEREAS, numerous other manufactured homes on the Property are owned by Schierholz and Associates, Inc. or its affiliated business THROM, LLC, a Colorado limited liability company now known as First Phoenix, LLC, whose Colorado principal mailing address is also P.O. Box 60969, Colorado Springs, CO 80906, which manufactured homes are then leased out to occupying tenants on the Property; and

WHEREAS, it has come to the City's attention that numerous manufactured homes held for rental on the Property are substandard and/or hazardous buildings as defined by Minnesota Statutes §463.15; and

WHEREAS, at a City Council meeting on July 13, 2021, the Residents Association for Broadmoor Valley mobile home park presented photographic evidence and expressed concerns to the City Council with regard to conditions and potential City Code violations on the Property and specifically identifying various uninhabitable manufactured homes on the Property; and

WHEREAS, the building inspections department for the City of Marshall has been and currently is aware of the conditions surrounding the various hazardous buildings located on the Property; and

WHEREAS, City building official Ilya Gutman provided correspondence to Schierholz and Associates, Inc. dated April 12, 2017, January, 8, 2019, June 18, 2020 and July 30, 2020

notifying said entity of the dangerous state of a repair and City Code violations for numerous buildings on the Property. Further, the City of Marshall has retained services of Kennedy & Graven, Chartered law firm from Minneapolis, Minnesota and Jason M. Hill, an attorney from that firm, notified Schierholz and Associates, Inc. by letter dated May 4, 2021 regarding the circumstances and City Code violations existing of various buildings located within on the Property. The requests for repair and upgrade of the buildings on the Property have been ignored and the dangerous conditions and City Code violations have not been rectified; and

Further, building official, Ilya Gutman completed a further visual inspection of various buildings on the Property on Thursday, August 5, 2021; and

WHEREAS, as was reflected in the photographs provided by residents of the Broadmoor Valley mobile home park, City building official Ilya Gutman noted the following with regard to four (4) manufactured homes on the Property: (1) general dilapidation of the exterior including holes in the exterior structure, (2) opportunities for water intrusion into the structure, (3) unsecure doors and broken windows, and (4) buildings that have been unoccupied and unused for many years; and

WHEREAS, building official Ilya Gutman and City Attorney Dennis Simpson are recommending that the properties listed below be razed and removed from the Property as an abatement in accordance with Minnesota Statutes §463.15 through §463.261; and

AND WHEREAS, it is hereby recommended that the following properties be razed and removed from the Property:

Property Address	Property Owner	Mailing Address -If Different
111 Spruce Lane	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
119 Spruce Lane	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
327 Timberlane Drive	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
358 Timberlane Drive	Schierholz and Associates, Inc.	PO Box 60969 Colorado Springs, CO 80906

WHEREAS, the four (4) properties as listed above are included on the list of properties identified in correspondence sent from the City to the Property owner demanding that the Property owner correct the deficiencies as identified in said correspondence; and

WHEREAS, the Property owner has ignored the demands from the City building official and counsel from Kennedy & Graven, Chartered to address the identified deficiencies; and

WHEREAS, the visual inspection of properties on August 5, 2021 has verified and confirmed the photographic documentation provided to the City Council by the Broadmoor Valley Resident's Association on July 13, 2021; and

WHEREAS, the Property owners have taken no steps to abate the hazardous conditions of the buildings described above; and

WHEREAS, City staff has exhausted its efforts attempting to accommodate the Property owner and has significant concerns about the hazardous conditions of the buildings identified above on the Property;

WHEREAS, the City has communicated its intent to the Property owner that if it fails to comply with the applicable City and state building codes, the City would initiate the hazardous building action; and

WHEREAS, Minnesota Statute §463.15 subd.3 defines a “hazardous building or hazardous property” as “a building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abatement, constitutes a fire hazard or hazard to public safety or health”; and

WHEREAS, Minnesota Statutes §463.16 and 463.17 authorize the governing body of a city or town to order the owners of any hazardous property or building within a municipality to correct or remove hazardous conditions; and

WHEREAS, Minnesota Statutes §463.161, authorizes a city to correct or remove a hazardous condition of any hazardous property or building if the owner of record fails to do so after a reasonable time and the district court enters a judgment sustaining the city’s order; and

WHEREAS, Minnesota Rules, Part 1300.0180 defines a building as unsafe “if it is structurally unsound, not provided with adequate egress, a fire hazard, or otherwise dangerous to human life” and further expressly provides at all unsafe buildings or public nuisances that “must be abated by repair, rehabilitation, demolition or removal according to Minnesota Statutes §463.15 to §463.26”; and

WHEREAS, to date, the Property owner has failed to take the steps necessary to abate the hazardous conditions of the buildings and properties identified above and has failed to cooperate with City staff in response to the City’s enforcement efforts; and

WHEREAS, based on the information presented, the City Council finds that the condition of the buildings and properties identified above are both hazardous and unsafe and, therefore, must be abated in accordance with applicable state and local laws.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MARSHALL, MINNESOTA:

1. The City Council adopts as factual findings, all of the above recitals.
2. The buildings located on the Property identified above are hazardous as that term is defined by Minnesota Statute §463.15 and unsafe as that term is defined by Minnesota Rules, Part 1300.0180.
3. The City Attorney, in consultation with Kennedy & Graven, Chartered, is authorized and directed to prepare an abatement order substantially similar to that attached hereto as Exhibit B to accomplish the means and intent of this resolution.

Specifically, the hazardous buildings identified herein are to be abated by the razing and removal of the manufactured home located as follows:

Property Address	Property Owner	Mailing Address -If Different
111 Spruce Lane	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
119 Spruce Lane	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
327 Timberlane Drive	THROM LLC	C/O Schierholz & Assoc PO Box 60969 Colorado Springs, CO 80906
358 Timberlane Drive	Schierholz and Associates, Inc.	PO Box 60969 Colorado Springs, CO 80906

4. The City Attorney, in consultation with Kennedy & Graven, Chartered, is authorized to take all necessary legal steps to effectuate service of this resolution and a corresponding abatement order in a manner required by law, including but not limited to obtaining a title search of the Property to confirm the identify of any and all owners, encumbrances and lienholders of the Property.

5. The City Attorney, in consultation with Kennedy & Graven, Chartered and City staff, is further authorized to take all necessary legal steps in order to secure compliance of the abatement order and may effectuate the removal of the buildings identified above or otherwise abate the hazardous conditions on the Property by either agreement with the Property owner or by court order and subsequently assess the cost thereof against the Property in accordance with law.

Passed and adopted by the Council this 10th day of August, 2021.

Robert J. Byrnes, Mayor

ATTEST:

Kyle Box, City Clerk

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Abatement Order

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

Case Type: Other Civil

In the Matter of the Hazardous
Buildings Located at 111 Spruce Lane,
119 Spruce Lane, 327 Timberlane Drive and
358 Timberlane Drive, Marshall, Minnesota.

**ORDER FOR ABATEMENT OF
HAZARDOUS BUILDINGS**

TO: All owners, occupants, and lienholders of record.

The City Council of the City of Marshall (the “City”) orders that within 30 days of service of this Order you abate the hazardous conditions which currently exist on the buildings and property addressed as 111 Spruce Lane, 119 Spruce Lane, 327 Timberlane Drive and 358 Timberlane Drive, Marshall, Minnesota, which is located on property legally described on Exhibit A attached hereto, Lyon County PID’s 27-604126-0 and 27-604128-0 (the “Property”). As further detailed herein, abatement shall occur by either (1) razing (demolishing) the hazardous buildings, or (2) carrying out in full the list of items outlined below.

The City of Marshall, pursuant to Minnesota Statutes Sections 463.15 to 463.261, finds the buildings located at the above-referenced property constitute hazardous buildings within the meaning of Minnesota Statutes Section 463.15 subdivision 3, specifically due to the poor condition of the exterior, water intrusion, and the overall condition of the buildings.

Pursuant to the above-referenced statutes, it is hereby ORDERED that you abate the hazardous property conditions within 30 days of the date of service of this Order by either removing the structures or completing the following:

1. Obtain permits and begin work on needed exterior repairs according to the City's Building Official's assessment;
2. Replace all rotten boards on the exterior of the buildings;
3. Repair and/or replace all siding and exterior sheathing with holes;
4. Repair and/or replace missing and deteriorated siding;
5. Repaint existing siding that is in fair condition;
6. Ensure roof, soffit, fascia and flashing are sound, tight, and have no defects to admit water intrusion into the buildings, including replace any missing roofing;
7. Repair all cracks and holes in the walls and ceilings of the buildings;
8. Repair or replace all windows and doors that are in poor condition and not weather tight;
9. Repair and secure all faulty and unsafe electrical wiring throughout the buildings;
10. Remove all debris and other loose materials that may have accumulated throughout the buildings;
11. Interior ceilings and walls of the dwelling need to be finished including but not limited to adding proper insulation and interior finish;
12. Repair or replace skirting that is missing or in poor condition; and
13. Test for mold and remediate any mold present in the buildings.

You must apply for and obtain any appropriate permit(s), if applicable, for the work you intend to perform from the appropriate City offices before abating the hazardous conditions. This Order is not a permit. Further, all work completed is subject to inspection by the City's building inspector, fire inspector, and other staff as required to ensure compliance with applicable rules and law.

You are further advised that unless such corrective action is taken or an Answer is served on the City and filed with the Lyon County District Court Administrator within 21 days of the date of service of this Order upon you, a motion for summary enforcement of this Order will be made to Lyon County District Court.

You are further advised that if you do not comply with this Order and the City is compelled to take any corrective action, all necessary costs incurred by the City in taking the corrective action will be assessed against the Property pursuant to Minnesota Statutes Section 463.21. In connection thereto, the City intends to recover all its expenses incurred in carrying out this Order, including specifically but not exclusively, filing fees, service fees, publication fees, attorneys' fees, appraisers' fees, witness fees, including expert witness fees and traveling expenses incurred by the City from the time this Order was originally made pursuant to Minnesota Statutes Section 463.22.

Dated: _____, 2021

[SIGNATURE BLOCK]

EXHIBIT A

Legal Description