

*AAB Regular
Meeting of
March 20, 2024*

Agenda Item E1

Appellant Statement

*NEDEAU LAW PC
154 Baker Street
San Francisco, CA 94117*

Christopher A. Nedeau
(415) 516-4010
cnedeau@nedeaulaw.net

Submitted by US Mail and Email dbi.aab@sfgov.org

February 1, 2024

Matthew Greene, Secretary
Abatement Appeals Board
49 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Re: 102 Baker Street—NOV# 202290668 AAB Appeal No. 6911

Dear Mr. Greene,

Pursuant to the January 22, 2024, Notice of AAB Hearing, I am submitting the following statement with three attached declarations.

This appeal from the Director's Order No. 202290668-A challenges item 7 in the Notice of Violation where Inspector Osbourne required the building to be painted. All other items were complied with (see declaration of Michael Spillane).

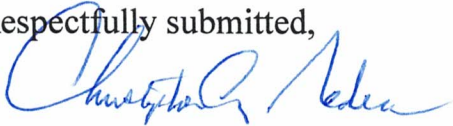
The building was recently inspected by Edward Sweeney, former Deputy Chief Building Inspector for the San Francisco Department of Building Inspection. He found the condition of the premises in compliance with the Order of Abatement-Order No. 202290668 except for painting of the building which he believes is unnecessary and inappropriate until the end of construction (see declaration of Edward Sweeney).

As the owner of the property, I am aware of complaints by neighbors regarding the two-year delay in resuming work on the building. The delay was caused by the ongoing contract arbitration, Buteo Builders' liens and the civil lawsuit which made obtaining financing and hiring another contractor impossible. Now that the

litigation has been settled, I am soliciting bids and financing to complete renovation of the property (see declaration of Christopher A. Nedeau).

Accordingly, I request that the Order of Abatement requiring painting of the building be stayed until construction can be completed.

Respectfully submitted,



Christopher A. Nedeau

Enclosed declarations of Michael Spillane, Edward Sweeney, and Christopher Nedeau

1 CHRJSTOPHER A. NEDEAU (SBN 81297)
2 NEDEAU LAW PC
3 154 Baker Street
4 San Francisco, CA 94117-2111
5 Tel. (415) 516-4010
6 cnedeau@nedeaulaw.net

7 Attorney for The Nedeau 1994 Living Trust:

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ABATEMENT APPEALS BOARD
CITY & COUNTY OF SAN FRANCISCO

AAB APPEAL NO. 6911

In Re: ORDER OF ABATEMENT-ORDER
NO. 202290668

**DECLARATION OF MICHAEL
SPILLANE IN SUPPORT OF OWNER'S
APPEAL OF DIRECTOR'S ORDER NO.
202290668-A**

ISSUED BY HOUSING DIVISION OF
DEPARTMENT OF BUILDING
INSPECTION.

**Address: 102 Baker Street
Block No. 1219 Lot: 018 Seq. 02
Complaint: 202290668**

**Date: February 21, 2024
Time: 9:30 am
Location: Room 416, City Hall**

1 I, Michael Spillane declare as follows:

- 2 1. I am the owner of Spillane General Engineering and Plumbing. I have over
3 thirty (30) years of experience in construction. I am a licensed hazardous
4 materials handling contractor (License no. 651043).
- 5 2. In January 2021, my company was hired by Christopher Nedeau, the
6 owner of 102 Baker Street to manage the contact for foundation work
7 performed by Buteo Builders, Inc., I worked from February 2021 through
8 September when a dispute arose over approximately \$100,000 in change
9 orders and the foundation contractor left the jobsite. I am informed and
10 believe that the property owner was sued, and a lien was filed against the
11 property.
- 12 3. After Buteo Builders abandoned the job, I continued to manage the
13 property. This included erecting an eight-foot fence with a chain and
14 combination lock, boarding up the alleyway and securing all openings to
15 prevent access from trespassers. I monitor the property and continue to
16 clean up the job site, paint out graffiti, re-secure the fence and reinforce
17 plywood coverings on doors and windows.
- 18 4. On or about May 5, 2022, I received a Notice of Violation issued by
19 Inspector Donald Osborne of the Housing Inspection Services Division of
20 the Department of Building Inspection. This Notice is attached to my
21 declaration and marked as Exhibit A.
- 22 5. After reviewing the Notice, as the construction manager, I met with Inspector
23 Osbourne at the property on several occasions. Pursuant to Inspector
24 Osbourne's instructions, I routed drainage pipe from the roof to the sewer
25 (item no. 2), removed all debris onsite (item no. 3), scaffolded the side of the
26 building and pressure washed away the damaged and peeling paint to prevent
27 a lead hazard (item no 4), I complied with San Francisco Lead Ordinance
28

DECLARATION OF MICHAEL SPILLANE IN SUPPORT OF OWNER'S APPEAL

1 Regulations by encapsulating the front and back of the building and roof with
2 protective straw waddles to capture any residual flaking of potential lead
3 residue after pressure washing. (item no 5) and covered all exterior
4 door/walls with plywood so the building cannot be entered by trespassers
5 (item no. 7).

- 6 6. On September 28, 2022, Inspector Osbourne agreed that items 2 (route
7 roof drainage to sewer) and item 7 (cover exterior doors and windows)
8 were complete. The inspector wrote: "*Contractor said 8/1/22 that scaffold
9 with netting was being installed to contain paint chips and to allow access
10 to roof to remove unsecured roof components This case will be referred to
11 Director's Hearing if re-inspection on 10/12/22 @ 11 am confirms that
12 above work is not complete.*"
- 13 7. I have satisfied each of the items in the Notice of Violation except for item
14 number 6 which requires the owner to paint the building in all areas where
15 paint has been removed or is weathered or missing, prep and repaint using
16 high quality paints, applied per the manufacturer's instructions, to protect
17 wood, stucco, and other exterior surfaces from weather and wear.
- 18 8. The permitted plans and specifications for renovation of this property
19 show that the exterior of the building will be repainted at the conclusion
20 of the construction process. Requiring the building to be repainted before
21 construction is finished is unrealistic because it needs to be deferred until
22 framing and insulation work can be completed.
- 23 9. I am informed and believe that the litigation over the change orders with
24 Buteo Builders recently settled and that bids are being solicited to finish
25 the foundation and structural steel work. In the meantime, my crew
26 continues to monitor the jobsite to keep it clean, eliminate all lead paint
27 hazards and secure it from intrusion.
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DECLARATION OF MICHAEL SPILLANE IN SUPPORT OF OWNER'S APPEAL

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10. Based on my discussions with Inspector Osbourne, I was led to believe that we had complied with all requirements of the Notice except for repainting the exterior of the building. I request that the Order of Abatement requiring painting the building be stayed until construction is completed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed by me this 1st day of February 2024, at San Francisco, California.



Michael Spillane

EXHIBIT A

Housing Inspection Services Division
City and County of San Francisco
49 South Van Ness Avenue, San Francisco, California 94103-1226
(628) 652-3700 Fax: (628) 652-3709 Email: DBIHIDComplaints@sfgov.org Website: www.sfdbi.org

NOTICE OF VIOLATION

COMPLAINT: 202290668

OWNER/AGENT: NEDEAU 1994 LIVING TRUST THE

DATE: 05-MAY-22

MAILING

ADDRESS: NEDEAU 1994 LIVING TRUST TH
CHRISTOPHER A NEDEAU
154 BAKER ST
SAN FRANCISCO CA
94117

LOCATION: 102 BAKER ST

BLOCK: 1219 **LOT:** 018

NOTICE TYPE: COMPLAINT

BUILDING TYPE: NA

USE TYPE: R3

YOU ARE HEREBY ORDERED TO COMPLY WITH THE FOLLOWING REQUIREMENTS:

ITEM	DESCRIPTION
1 THIS NOTICE INCLUDES VIOLATIONS FOR THE AREAS NOTED.	102 Baker
2 ROUTE ROOF DRAINAGE TO SEWER	At the temporary downspouts, rainwater discharges onto the sidewalk. Have a professional route the downspouts into the sewer.
3 REMOVE DEBRIS (1306,1307 HC)	At the roof, there are loose shingles and other roof components which are falling off and landing on neighboring properties. Have a professional, using approved methods and materials, remove all loose materials (deteriorated roofing components) to prevent migration of materials on to neighboring properties and to prevent further materials from falling off of the building.
4 REMOVE OR COVER DAMAGED/PEELING PAINT IN AN APPROVED MANNER TO PREVENT A LEAD HAZARD. SEE LEAD HAZARD WARNING (1001k,1001h)	On all sides of the building, there is peeling, worn and missing paint. Remove or cover all worn and peeling paint to avoid lead hazard. (see lead hazard warning)



DEPARTMENT OF BUILDING INSPECTION

Housing Inspection Services Division

City and County of San Francisco

49 South Van Ness Avenue, San Francisco, California 94103-1226

(628) 652-3700 Fax: (628) 652-3709 Email: DBIHIDComplaints@sfgov.org Website: www.sfdbi.org

NOTICE OF VIOLATION

COMPLAINT: 202290668

5 FOLLOW SAN FRANCISCO LEAD ORDINANCE REGULATIONS

LEAD HAZARD WARNING: Disturbing lead based paint can be EXTREMELY DANGEROUS to dwelling occupants and visitors, particularly to young children, pregnant women, pets, and to people performing work on the premises.

Section 327 of the San Francisco Existing Building Code regulates work that disturbs or removes lead based paint in the interior or exterior of pre-1979 buildings. Informational packets available at 628 6523700 provide information on notification, performance standards, handling, containment and cleanup requirements for projects involving lead-based paint .

All dust, chips and debris must be contained to the area of work in an approved manner. Complaints about uncontained dust and chips will be investigated, and the cost of lead mitigation(clean-up), and clearance reports arising from uncontained dust and chips will be borne by the owner.

You can contact the San Francisco Childhood Lead Poisoning Prevention Program at: (415) 252 3956 for free advice. IF YOU CAUSE LEAD DUST TO BE CREATED, YOU COULD BE LIABLE FOR ANY ILLNESS CAUSED BY THE DUST. Ordinance #446-97.

*******IMPORTANT*******

All peeling paint and substrates are assumed to have lead content. All paint chips and dust must be contained and removed per the San Francisco Existing Building Code. Because removal of lead chips and dust is a specialty, the painter-contractor that does this work is to be licensed and certified by the State of California. If there is contamination, the cost of clean up and abatement will be the responsibility of the owner. If there is contamination, certified clean up and lead clearance reports will be required, and the cost of this clean up, testing and reports will be the RESPONSIBILITY OF THE OWNER.

6 PAINT BUILDING (1001H, 1001K)

In all areas where paint has been removed or is weathered or missing, prep and repaint using high quality paints, applied per the manufacturer's instructions, to protect wood, stucco, and other exterior surfaces from weather and wear.

7 PROVIDE EXTERIOR DOORS/WALLS (706 HC)

At the street, the cyclone (chain link) fence does not provide security. it is easily climbed, and there is a large gap where trespassers can pass through without climbing. Have a professional, using approved methods and materials, cover all entrances to the building (the open garage and any other openings) with plywood so that the building cannot be entered. There are reports of trespassers entering the building.

1 CHRJSTOPHER A. NEDEAU (SBN 81297)
2 NEDEAU LAW PC
3 154 Baker Street
4 San Francisco, CA 94117-2111
5 Tel. (415) 516-4010
6 cnedeau@nedeaulaw.net

7 Attorney for The Nedeau 1994 Living Trust:

8 **ABATEMENT APPEALS BOARD**
9 **CITY & COUNTY OF SAN FRANCISCO**

10 **AAB APPEAL NO. 6911**

11 In Re: ORDER OF ABATEMENT-ORDER
12 NO. 202290668

13 **DECLARATION OF EDWARD SWEENEY**
14 **IN SUPPORT OF OWNER'S APPEAL OF**
15 **DIRECTOR'S ORDER NO. 202290668-A**

16 ISSUED BY HOUSING DIVISION OF
17 DEPARTMENT OF BUILDING
18 INSPECTION.

19 **Address: 102 Baker Street**
20 **Block No. 1219 Lot: 018 Seq. 02**
21 **Complaint: 202290668**

22 **Date: February 21, 2024**
23 **Time: 9:30 am**
24 **Location: Room 416, City Hall**

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1 I, Edward Sweeney declare as follows:

- 2 1. I am retired from the San Francisco Department of Building Inspection
3 (“DBI”). After working as a union carpenter for twenty years, I joined DBI as
4 a District Building Inspector. I was promoted to Senior Building Inspector, a
5 position I held for four years until I became Chief Building Inspector for 2 to
6 3 months. Thereafter from 2006 to 2020, I was the Deputy Chief Building
7 Inspector for DBI.
- 8 2. I am familiar with the abatement process by Housing Inspection Services of
9 DBI and am qualified to testify as an expert witness regarding whether
10 requirements with which the owner of the property has been ordered to comply
11 are necessary and appropriate.
- 12 3. I have been retained as an expert in support of the appeal of Order of
13 Abatement-Order No. 202290668, and I have reviewed the Notice of Violation
14 by Inspector Osbourne issued on May 5, 2022 (Exhibit A).
- 15 4. On January 11, 2024, I inspected the property at 102 Baker Street with Michael
16 Spillane, the construction manager.
- 17 5. During the inspection I saw that the drainpipe to route roof drainage to the
18 sewer had become disconnected. I pointed this out to Mike Spillane. I am
19 advised that this has been repaired by Spillane Engineering and Plumbing.
- 20 6. I saw no roofing debris on or around the jobsite, and I am informed and believe
21 that all loose shingles and other roof components have been removed.
- 22 7. I understand that the south alley wall was scaffolded, and pressure washed to
23 remove peeling paint. I saw no evidence of lead paint residue or paint chips.
- 24 8. I observed that all exterior doors and windows are boarded up to prevent
25 trespassers from entering the building.
- 26 9. I disagree with item 6 of the Notice of Violation requiring the owner to paint
27 the building in all areas where paint has been removed or is weathered or
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DECLARATION OF EDWARD SWEENEY IN SUPPORT OF OWNER’S APPEAL

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missing. The permitted plans and specification for the building already provide for insulation, caulking, and painting the exterior of the building at the conclusion of the renovation process.

10. In my opinion it is unnecessary and inappropriate for Housing Inspection Services to require the building to be repainted pursuant to the Order of Abatement before construction work is finished. To do so would be a waste of money and resources because this work would likely need to be done again after the renovation of the building.

11. With the exception of item 6 requiring painting the exterior of the building, I believe that the owner has satisfied all of the items in the Notice of Violation, and I request that the Order of Abatement requiring painting the building is stayed until the construction is completed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed by me this 1st day of February 2024, at San Francisco, California.



Edward Sweeney

1 CHRJSTOPHER A. NEDEAU (SBN 81297)
2 NEDEAU LAW PC
3 154 Baker Street
4 San Francisco, CA 94117-2111
5 Tel. (415) 516-4010
6 cnedeau@nedeaulaw.net

7 Attorney for The Nedeau 1994 Living Trust:

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ABATEMENT APPEALS BOARD
CITY & COUNTY OF SAN FRANCISCO

AAB APPEAL NO. 6911

**DECLARATION OF CHRISTOPHER A.
NEDEAU IN SUPPORT OF APPEAL OF
DIRECTOR'S ORDER NO. 202290668-A**

In Re: ORDER OF ABATEMENT-ORDER
NO. 202290668

ISSUED BY HOUSING DIVISION OF
DEPARTMENT OF BUILDING
INSPECTION.

**Address: 102 Baker Street
Block No. 1219 Lot: 018 Seq. 02
Complaint: 202290668**

**Date: February 21, 2024
Time: 9:30 am
Location: Room 416, City Hall**

1 I, Christopher A. Nedeau declare as follows:

- 2 1. I am co-trustee of the Nedeau 1994 Living Trust, the owner of 102 Baker
3 Street, the property which is the subject of Director's Order No. 202290668-
4 A regarding Complaint 202290668.
- 5 2. On or about January 31, 2021, I contracted with Buteo Builders, Inc. for
6 replacement of the foundation of 102 Baker Street for \$159,729. The agreed
7 completion date was May 31, 2021, and payment was due when the project
8 was finished less a \$10,000 hold back for punch list items.
- 9 3. However, the work was not completed by the end of May. The contractor took
10 paternity leave and the job continued through the summer. In July, Buteo
11 Builders demanded payment of \$50,000 to continue work. Since the building
12 was shored up to pour the concrete foundation, there was no choice but to pay
13 the demand. In August and September two more payments were demanded by
14 Buteo and paid for a total of \$145,000 before the building was lowered and
15 bolted to the new concrete foundation. On October 22, 2021, Buteo demanded
16 \$97,728 in new change orders without prior notice as required by the contract
17 or adequate documentation. I refused to pay and Buteo abandoned the job.
- 18 4. On December 6, 2021, Buteo filed a mechanic's lien on 102 Baker for
19 \$98,424.36. This lien was superseded on January 3, 2022, by a mechanic's lien
20 for \$106,414.36.
- 21 5. On March 1, 2022, Buteo filed a complaint for breach of contract in San
22 Francisco Superior Court Case No. CGC-22-598464. The case was stayed in
23 lieu of contract arbitration with JAMS. This litigation continued for two years
24 until November 2023 when the matter was settled.
- 25 6. During the pendency of the contract arbitration, the neighbors became upset
26 at the lack of progress on the renovation. I explained that until the liens were
27 removed when the contract arbitration over the change orders was adjudicated,
28

DECLARATION OF CHRISTOPHER A. NEDEAU IN SUPPORT OF APPEAL

1 no lender would finance further work on the project and no contractor would
2 bid on it.

3 7. My explanation made no difference to the neighbors who have engaged in a
4 campaign of harassment and intimidation including spray painting “*Vac Tax*”
5 on the plywood covering the openings of the building, tearing down the fence,
6 smearing feces on the door handles of my car and keying the driver’s side
7 scratching “*FU NED*” through the painted surface.

8 8. At the Director’s Hearing many neighbors attended and complained at the lack
9 of progress of renovation of the building.


10 9. Despite explaining the cause of the delay at the hearing and to Inspector
11 Osbourne and compliance with all items on the Notice except for painting the
12 building, an Order of Abatement-Order No. 202290668 was entered on
13 January 12, 2023.

14 10. On January 19, 2023, the Order of Abatement was appealed.

15 11. The contract arbitration was settled with Buteo Builders in November 2023.
16 Pursuant to the settlement, all mechanic’s liens were supposed to be removed
17 and the civil complaint dismissed.

18 12. On or about January 11, 2024, I met with John Pollard of SF Garage at the
19 property to get a bid for completion of the remaining foundation work and
20 installation of the remaining structural steel. This bid has not yet been
21 received.

22
23 I declare under penalty of perjury that the foregoing is true and correct.
24 Executed by me this 1st day of February 2024, at San Francisco, California.

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26 
27 _____
28 Christopher A. Nedeau