

SUPREME COURT OF THE STATE OF NEW YORK
CAYUGA COUNTY

On behalf of the Petitioner City of Auburn
In the Matter of the Abandonment of

16 South Street, Auburn, New York

SBL No.: 116.45-2-73

-against-

Schines Theater, LLC and Cayuga County and New
York State Historic Preservation Office, Respondents

**ORDER TO
SHOW CAUSE**

RPAPL § 1981(2)

Index No.: E2024-1034

Upon the petition of the City of Auburn verified on January ___, 2025, by City of Auburn
Special Counsel Young/Sommer LLC,

Let Respondents Schines Theater, LLC, New York State Historic Preservation Office and
Cayuga County, and any other interested parties show cause before this Court at the Cayuga
County Courthouse, 152 Genesee Street, Auburn, New York, on _____, 2025,
upon submission of papers only unless otherwise directed by the Court, why an order should not
be made Conveying Title to an Abandoned Commercial Property (“**Property**”) known as 16
South Street, in the City of Auburn to the Petitioner City of Auburn pursuant to Article 19-B
RPAPL § 1982 et. seq., and for such other and further relief as the Court may deem just and
proper.

The following notice shall be published one (1) time in The Citizen newspaper [on or
before _____, 2025:

NOTICE IS HEREBY GIVEN that a petition has been filed in Supreme Court,
Cayuga County by the City of Auburn; Conveying Title to an Abandoned
Commercial Property known as 16 South Street in the City of Auburn, to the City
of Auburn Pursuant to Article 19-B RPAPL § 1982 et. seq., filed as Index No.:

E2024-1034. Let Schines Theater, LLC, New York State Historic Preservation Office and Cayuga County and any other interested parties with any reasonable objection to this conveyance of title show cause before the Court at the Cayuga County Courthouse, 152 Genesee Street, Auburn, New York on _____ at ____ AM. Any persons wishing to review the Order to Show Cause and the Verified Petition of the City of Auburn may review those documents and supporting exhibits in the office of the County Clerk.

Service of a copy of this order and a copy of the papers upon which it is granted shall be delivered via certified mail to Schines Theater, LLC, New York State Historic Preservation Office and Cayuga County, which shall be deemed sufficient service; and

A copy of the Verified Petition shall be posted in a conspicuous place on the premises in question on or before _____, 2025 accompanied by a notice that any person having or claiming an interest in the property may appear at the hearing.

Dated: _____, 2025

Hon.

SUPREME COURT OF THE STATE OF NEW YORK
CAYUGA COUNTY

On behalf of the Petitioner City of Auburn
In the Matter of the Abandonment of

16 South Street, Auburn, New York

SBL No.: 116.45-2-73

-against-

Schines Theater, LLC and Cayuga County and New
York State Historic Preservation Office, Respondents

**VERIFIED
PETITION**

RPAPL § 1981(2)

Index No.: E2024-1034

Petitioner, City of Auburn, by its special counsel Young/Sommer LLC, as and for a verified petition under RPAPL §1983, respectfully alleges as follows:

1. Petitioner, the City of Auburn (“City”) makes this petition, verified by City of Auburn special counsel Attorney Hyde Clarke, Esq., pursuant to NYS RPAPL § 1980, which provides that a city “may institute a proceeding in accordance with the provisions of this article for a judgment vesting in the city, town or village title to a commercial or industrial real property which has been abandoned by the owner,” to acquire certain abandoned property.

2. Upon information and belief, Respondents Schines Theater, LLC, New York State Historic Preservation Office and Cayuga County have a potential interest in the property known as 16 South Street, in the City of Auburn, State of New York (hereinafter “Property”). A copy of a title report dated August 16, 2024 is annexed hereto as **Exhibit A**.

3. Defendant Schines Theater, LLC is listed as the current owner of the property, and has filed no objection in the proceeding with the City or this office.

4. This matter has been discussed with the New York State Attorney General’s Office and New York State has no objection.

7. In an effort to avoid not identifying the proper owner of the property and based on the transactional history listed above, Petitioner included a newspaper notice in the Order to Show Cause.

8. Upon information and belief, Schines Theater, LLC, New York State Historic Preservation Office and Cayuga County have made no formal claim to the Property, in response to the Notice of Intent to Commence Abandonment Proceedings served by Petitioner November 7, 2024.

9. Upon information and belief, no mortgages remain outstanding on the Property. *See* the Mortgage Schedule included in **Exhibit A**.

10. A judgment and lien search was conducted against the certified owners and there were no such documents existing of record. *See* **Exhibit A**.

11. Upon information and belief, there are no tenants and or any other persons occupying the Property.

12. RPAPL § 1981 provides that a vacant commercial or industrial real property is considered abandoned where it is not sealed or continuously guarded as required by law or it was sealed or is continuously guarded by a person other than the owner, a mortgagee, lienor or agent thereof, and either of the following facts exists:

- (i) A vacate order of the department or other governmental agency currently prohibits occupancy of the commercial or industrial real property; or
- (ii) The tax on such premises has been due and unpaid for a period of at least one year; or
- (iii) The property has had a zoning, building or property maintenance code violation that has the potential to injure or endanger the health and safety of others or to unreasonably annoy others and that has been continuously outstanding and not remediated for a period of at least one year from the date the original order to correct or notice of violation was served upon the property owner pursuant to subdivision four of

section three hundred eight of the civil practice law and rules if the owner is a natural person, or pursuant to section three hundred ten, three hundred ten-a, three hundred eleven or three hundred eleven-a of the civil practice law and rules if the owner is a partnership, limited partnership, corporation or limited liability company, respectively;

13. In the instant proceeding the elements of RPAPL § 1981 have been satisfied as evidenced by the Certificate of Abandonment for the City, which is annexed hereto as **Exhibit B**, indicating that the following conditions exist at the Property which are dangerous to life, health and safety: the premises are vacant, unsafe and uninhabitable and the building is structurally unsound and collapsing. Code Enforcement Officer Brian Hicks posted a copy of the Certificate at the Property (**Exhibit D**). The premises have remained and continue to remain open and unguarded in violation of law; and a Certificate of Abandonment has been issued to the Property. Additionally, as set forth in the Tax Search provided by SMPR Title Agency, Inc., a total of Twenty-Thousand Nine Hundred Seventy-Seven and 98/00 Cents (\$20,977.98) is currently owing and due in municipal taxes on the Property and continues to accrue. See **Exhibit A**.

14. RPAPL further provides that when a property is found to be abandoned, the Petitioner City:

"shall make and file among its records a certification containing such finding and the facts on which it is based. Further, it shall immediately affix to the commercial or industrial real property in a prominent and conspicuous location, a notice that the real property has been found to be abandoned and that it is a crime to take, remove or otherwise damage any fixture or part of the building structure." See RPAPL § 1981(2).

15. The Notice provision of Article 19-B are contained in RPAPL § 1982 and provides that:

"1. If the department proposes to institute proceedings pursuant to this article, it may file a copy of the certification and a notice of intention to commence such proceedings in the office of the clerk of the county in which the commercial or industrial real property

is located. Such notice shall contain the names of all persons required to be served pursuant to this section . . .

2. The department shall serve upon the owner of the commercial or industrial real property, a copy of the certification. Service shall be made personally or by posting in a conspicuous place upon the commercial or industrial real property and mailing a copy by certified mail to the last known owner at such owner's last known address. The copy of the certification shall be accompanied by a notice stating that proceedings pursuant to this article may be instituted unless the owner notifies the department that the property has not been abandoned. Such notification shall be made by a showing that the conditions upon which the findings in such certification are based do not exist or have been corrected. Such showing shall be made not later than thirty days after the date of such notice.”

16. RPAPL § 1982(3) further provides that:

“3. Within five days of the service of notice on the owner, a copy of the certification shall be served on each mortgagee, lienor and lessee of record, personally or by certified mail or overnight courier to the address set forth in the recorded instrument or, if no address appears therein, to the person at whose request the instrument was recorded. Such copy shall, in the case of a mortgagee or lienor, be accompanied by a notice that proceedings pursuant to this article may be instituted unless the mortgagee or lienor, within forty-five days of such mailing, either commences proceedings to foreclose the mortgage or lien or enters into an agreement with the department to bring the building into compliance with the applicable provisions of law.”

17. A Certificate of Abandonment (**Exhibit B**) and Notice of Intent to Commence Abandonment Proceedings (**Exhibit C**), were filed with the County Clerk on November 7, 2024. The Certificate of Abandonment and Notice of Intent to Commence Abandonment Proceedings were posted at the Property on November 8, 2024, the Affidavit of Service (of the posting) of Brian Hicks, City Code Enforcement Officer is annexed hereto as **Exhibit D**.

18. Annexed hereto as part of **Exhibit E** is an Affidavit of Service indicating that the Notice of Intent to Commence Abandonment Proceedings, which included the Certificate of Abandonment, was mailed to Schines Theater, LLC on November 7, 2024 via certified mail. New York State Historic Preservation Office and Cayuga County were also mailed on November 7, 2024

via registered mail. On November 20, 2024, additional copies of the documents were sent to the Cayuga County Clerk and New York State Historic Preservation office via certified mail, return receipt requested. *See* Affidavits of Service of Lori-Ann Schrom annexed as **Exhibit E**.

19. RPAPL § 1983 provides that in order to commence a proceeding in a court of competent jurisdiction in the county in which the commercial or industrial real property is located, to vest title to a property in the city, town or village:

“2. The petition in such proceeding shall be accompanied by a copy of the certification and proof by affidavit that the provisions of section nineteen hundred eighty-two of this article have been complied with and that no party served with the notice pursuant to such section has taken the appropriate action prescribed therein in response thereto.

3. A copy of the petition shall be served on all persons to whom notice was given pursuant to section nineteen hundred eighty-two of this article by personal service pursuant to article three of the civil practice law and rules. A notice of pendency shall be filed in accordance with the provisions of section sixty-five hundred one of the civil practice law and rules. A copy of the petition shall also be posted in a conspicuous place on the premises in question, accompanied by a notice that any person having or claiming an interest in the property may appear at the hearing thereon to protect his or her interest.

4. The petition shall be noticed to be heard not less than fifteen days after service is completed on all parties to the proceeding.

5. A special proceeding pursuant to this article may also be commenced by order to show cause, in which case the manner of service and the time at which the order is returnable shall be as prescribed therein by the court.

20. The City has confirmed that there has been no attempt by any party served with the Certificate of Abandonment and Notice of Intent to Commence Abandonment Proceedings to contact the City to advise that the Property is not abandoned, that the conditions upon which the findings in the certificate are based do not exist or have been corrected. No such efforts have been made regarding contacting the City of Auburn Special Counsel.

21. On or about November 20, 2024, an index number was purchased, and a notice of intent to commence proceedings pursuant to Article 19-B was filed with the County Clerk for the Property. This Order to Show Cause is brought pursuant to RPAPL § 1983(5) and petitioner requests that the Court prescribe the manner of service and the time at which the order is returnable.

WHEREFORE, it is respectfully requested that a final judgment be rendered directing that the building be deemed abandoned pursuant to RPAPL § 1982 and § 1983, an order vesting title to the Property in the City of Auburn, and for such other and further relief as the Court deems just and proper.

Dated: January 16, 2025
Albany, New York

YOUNG/SOMMER LLC

A handwritten signature in black ink, appearing to read "E. Hyde Clarke", is written over a horizontal line.

By:

E. Hyde Clarke, Esq.
Special Counsel, City of Auburn
5 Palisades Drive, Suite 300
Albany, New York 12205
Tele: (518) 438-9907
Email: hclarke@youngsommer.com

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

E. Hyde Clarke, Esq., being duly sworn, deposes and says:

I am the duly appointed special counsel for the City of Auburn, State of New York. I have read the foregoing Petition of City of Auburn To Convey Title to Abandoned Commercial Property of Title Owner Schines Theater, LLC, known as 16 South Street, in the City of Auburn to the City of Auburn Pursuant to Article 19-B RPAPL § 1982 et. seq., that I know the contents thereof and believe them to be true based on information and belief, the source of which is the City's file for this matter.



E. Hyde Clarke, Esq.

Sworn to before me this
16th day of January, 2025



Notary Public

LORI-ANN SCHROM
Notary Public, State of New York
Qualified in Albany County
No. 5060306
Commission Expires May 20, 2026