



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. ESTATE OF LORRAINE A. BRYANT, respondent

CASE NO. 2080036
[Bureau Case No. 94-000845-HS]

PROPERTY / ZONE / PARK: 3635 SE Clinton St.

LEGAL DESCRIPTION:
1S1E12AB-01100; Ravenswood; Lot 8 Block 3,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: November 25, 2008

APPEARANCES:

Mr. Lee Gonzales, for the City

Mr. Richard Bryant, for Respondent

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A hearing was held on November 25, 2008, where Mr. Richard Bryant and Mr. Lee Gonzales appeared and testified. Mr. Bryant represented Respondent and Mr. Gonzales represented the City of Portland. The Hearings Officer makes this decision based upon the testimony and arguments presented by Mr. Bryant and Mr. Gonzales and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 31).

Mr. Gonzales, at the hearing, reviewed the various exhibits. In particular, Mr. Gonzales reviewed the alleged violations at 3635 SE Clinton Street, Portland, Oregon (the "Subject Property"). Mr. Gonzales stated that the Subject Property has a long history of housing and nuisance violations extending back to 1994. Mr. Gonzales stated that the two violations that cause the greatest concern for the City are violations 6 (garage) and 8 (open electrical junction box). Mr. Gonzales stated that the garage has a history of transient and drug use. Mr. Gonzales submitted a writing indicating that the electrical panel in the southwest corner of the detached garage is detached and that electrical power has been turned off (Exhibit 31). This information lessens the safety risks associated with the "open electrical junction box."

Mr. Richard Bryant ("Richard") testified that Loraine Bryant, the listed Respondent, died on December 14, 2004. Mr. Gonzales and Richard requested that Lorraine Bryant be deleted and the Estate of Lorraine Bryant be added

as named Respondent in this case. The Hearings Officer concurs and the Complaint (Exhibit 1) is amended to reflect the Estate of Lorraine Bryant as the Respondent. Richard acknowledged that the Subject Property has a checkered history with the City of Portland and that the violations listed (Exhibit 1) do in fact likely exist at the Subject Property. The Hearings Officer finds that violations 1 through and including 9 (Exhibit 1a) exist at the Subject Property.

Richard recounted a complex history of guardians, executors, sales and failed sales related to Lorraine Bryant and the Subject Property. Richard stated that the Estate of Lorraine Bryant is now being probated in Oregon and Washington (ancillary probate). Richard requested that his sister, Kathleen Marshall, be added to the mailing list. Richard also expressed a desire that a new garage be allowed to be constructed at the same location as the existing garage if the existing garage is demolished. The Hearings Officer finds it appropriate to add Ms. Marshall (sister) to the mailing list in this case. The Hearings Officer finds he does not have authority to approve the rebuilding of a new garage at any location if the existing garage is demolished.

Mr. Gonzales requested that the Hearings Officer order the violations (Exhibit 1a) be corrected. The Hearings Officer finds such request to be reasonable and appropriate. Mr. Gonzales also requested the Hearings Officer order the imposition of a civil penalty in the amount of \$6,400.94. Mr. Gonzales explained that the \$6,400.94 civil penalty is comprised of the cost recovery of the City for 14 housing inspections (\$1,392.70), 13 nuisance inspections (\$1,293.24), cost of the hearing (\$1,215) and a \$2,500 penalty for the long time the case has been open without significant progress. The Hearings Officer finds the City's request for cost recovery and a \$2,500 penalty for lack of corrective action to be reasonable and supported by the evidence in the record.

Mr. Gonzales also requested two civil penalties be imposed as incentives for the Respondent to correct the violations. Mr. Gonzales requested a \$10,000 additional civil penalty as incentive. Mr. Gonzales requested that this civil penalty be suspended for a period of 120 days to allow Respondents to correct all of the violations and if corrected, the \$10,000 additional civil penalty would be cancelled. The Hearings Officer finds this request to be reasonable. The Hearings Officer finds that this case has been open for an extended period of time, very little effort has been made by Respondent (or predecessor) to correct the violations, and some of the violations could have been corrected with relatively little effort and expense (see for example, violations 3 and 4, Exhibit 1a). The Hearings Officer delayed issuance of this Order to provide even additional time for Respondents to correct the violations based upon Richard's statement that the estate was being probated and the estate did not have an abundance of cash to correct the problems.

Mr. Gonzales also requested, as an additional civil penalty, the amount of \$1,000 per month (to begin at the end of the 120 day period mentioned in the previous paragraph), for a period of up to one year, for each month that all violations are not corrected. The Hearings Officer finds Mr. Gonzales' request for a second civil penalty to be appropriate but finds that a single amount of \$10,000, at the end of one year after the 120 days mentioned above, would be a more effective incentive to Respondent to correct the violations.

Mr. Gonzales requested that the Hearings Officer's Order authorize the City, for a period of 1 year, to summarily abate any confirmed nuisance violations at the Subject Property. The Hearings Officer finds this request is reasonable and necessary considering the high number of nuisance violations documented at the Subject Property in the past and the lack of attention to owner abatement of the nuisances.

ORDER AND DETERMINATION:

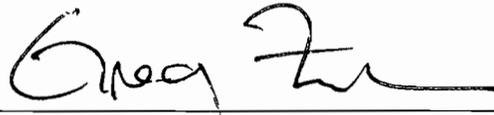
1. All violations listed on Exhibit 1a shall be corrected.
2. A civil penalty in the amount of \$6,400.94 is awarded and if not paid by May 15, 2009 shall become a lien upon the Subject Property.

3. An additional civil penalty in the amount of \$10,000 is awarded. This additional civil penalty (paragraph 3 of this Order) shall be suspended until 4:30 p.m. on August 7, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on August 7, 2009 indicating all violations set forth on Exhibit 1a have been corrected, then this additional \$10,000 civil penalty (paragraph 3 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on August 7, 2009, then the additional \$10,000 civil penalty (paragraph 3 of this Order) shall become due and payable and become a lien against the Subject Property.
4. A second additional civil penalty in the amount of \$10,000 is awarded. This second additional civil penalty (paragraph 3 of this Order) shall be suspended until 4:30 p.m. on May 5, 2010. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on May 5, 2010 indicating all violations set forth on Exhibit 1a have been corrected, then this second additional \$10,000 civil penalty (paragraph 4 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on May 5, 2010, then the second additional \$10,000 civil penalty (paragraph 4 of this Order) shall become due and payable and become a lien against the Subject Property.
5. The City shall have the right to summarily abate any future confirmed nuisance violations (including, but not limited to trash and debris, open and vacant building, disabled vehicle on private property) from the date of this Order until May 5, 2010. The City shall not be required to provide notice to Respondent and may proceed without a search warrant, and with the assistance of the Portland Police Bureau, if necessary.
6. The Hearings Officer retains jurisdiction in this case until May 7, 2010.
7. This order has been mailed to the parties on May 1, 2009, and shall become final and effective on May 15, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date. This case will be closed on May 10, 2010.
8. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 1, 2009

GJF:cb/rs

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Code complaint form	Gonzales, Lee	Received
1a	Attachment A - List of Violations	Gonzales, Lee	Received
2	Bureau Notification List	Gonzales, Lee	Received
3	Photo (no date)	Gonzales, Lee	Received
4	Multnomah Assessor Property Info. (3 pgs)	Gonzales, Lee	Received
5	Photo dated 11/8/02	Gonzales, Lee	Received
6	Photos dated 12/9/03 (2 pgs)	Gonzales, Lee	Received
7	Photos dated 12/6/05 (2 pgs)	Gonzales, Lee	Received
8	Photos dated 9/17/07 (2 pgs)	Gonzales, Lee	Received
9	Notice of Violation/Additional Violations dated 11/7/01 with List of Violations	Gonzales, Lee	Received
10	Notice of Violation/Progress Report dated 11/12/02 with List of Violations	Gonzales, Lee	Received
11	Notice of Violation/Additional Violations dated 12/16/03 with List of Violations	Gonzales, Lee	Received
12	Notice of Violation/Progress Report dated 10/5/04 with List of Violations	Gonzales, Lee	Received
13	Notice of Violation/Additional Violations dated 12/16/05 with 2 page List of Violations	Gonzales, Lee	Received
14	Notice of Violation/Additional Violations dated 10/12/06 with 2 page List of Violations	Gonzales, Lee	Received
15	Notice of Violation/Referral to Hearings Officer dated 10/1/07 with 2 page List of Violations	Gonzales, Lee	Received
16	Notice of Violation/Referral to Hearings Officer dated 10/17/08 with 2 page List of Violations	Gonzales, Lee	Received
17	Notice of Code Enforcement Fee Increase dated 6/6/02	Gonzales, Lee	Received
18	Letter on ONI letterhead from Melissa Kuhn to Guardianship Services of Seattle, Attn: Jim Auld, dated 8/24/04	Gonzales, Lee	Received
19	Letter on ONI letterhead from Maralea Lutino to Richard Bryant dated 4/13/05 (2 pgs)	Gonzales, Lee	Received
20	Letter from Richard Bryant to Steve Kass dated 7/29/05	Gonzales, Lee	Received
21	Enforcement Fee Increase Notification dated 9/26/07	Gonzales, Lee	Received
22	Enforcement Fee Increase Notification dated 6/30/08	Gonzales, Lee	Received
23	Case History (7 pgs.)	Gonzales, Lee	Received
24	Copies of inspection card notes (16 pgs.)	Gonzales, Lee	Received
25	AMANDA data printout	Gonzales, Lee	Received
26	Lien Accounting printout dated 9/3/08	Gonzales, Lee	Received
27	Mailing list	Hearings Office	Received
28	Hearing Notice	Hearings Office	Received
29	Notice of Rights & Procedures	Hearings Office	Received
30	Photos	Gonzales, Lee	Received
31	Copy of email to Schippers regarding case	Gonzales, Lee	Received