



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S AMENDED ORDER

CITY OF PORTLAND, petitioner, vs. JEFF MORAN AND DARLENE RENTIE MORAN, respondents

CASE NO. 2090028
[Bureau Case No. 08-131648-HS]

PROPERTY: 111 N Bridgeton Rd., Space E04

LEGAL DESCRIPTION:
Wayne's Moorage, MB X #FH1822, Floating, 1N1E03AB-02600,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: May 18, 2009

APPEARANCES:

Mr. William Jeff Moran, Respondent

Mr. Mitch McKee, representing the City

HEARINGS OFFICER: Mr. Ian Simpson

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Both Mr. Moran, respondent, and Mr. McKee, Bureau of Development Services Senior Housing Inspector, testified under oath or affirmation. After the May 18, 2009 hearing, Mr. McKee submitted a Stipulated Agreement For Repairs ("Stipulated Agreement") (Exhibit 27) signed by Mr. Moran and Mr. McKee. The Stipulated Agreement relates to the anticipated correction of violations (Exhibit 1) at 111 N Bridgeton Rd., Space E04, Portland, Oregon (the "Subject Property") and consequences for failure, in a timely manner, to make corrections in a manner acceptable to the City. Mr. Moran testified that all of the listed violations exist. The Hearings Officer received Exhibits 1 through and including 27 into the record without objections (Exhibit 27, the Stipulated Agreement, was received after the hearing). The Hearings Officer also receives Exhibits 28 and 29 into the record without objections.

The Hearings Officer, having reviewed the Stipulated Agreement, agreed that it was in the best interests of the City and the respondents that the Stipulated Agreement become part of the June 9, 2009 Order. The Hearings Officer incorporated the Stipulated Agreement as a part of the June 9, 2009 Order.

In the June 9, 2009 Order, the Hearings Officer omitted modifications to the submitted Stipulated Agreement that were detailed in the May 18, 2009 hearing, and were to be incorporated into the Order. To correct this error, the Hearings Officer issues this Amended Order to accurately reflect the Stipulated Agreement with modifications agreed to by the parties and approved by the Hearings Officer in the May 18, 2009 hearing.

Mr. McKee stated in the May 18, 2009 hearing that he asked Mr. Moran to provide fencing on the floating property. Mr. McKee explained that the property's deck was damaged and unsafe, and so a fence was needed to protect against unwanted entry. On May 22, 2009, Mr. Moran provided photographs (Exhibit 26) to Mr. McKee showing that the fencing was built. Mr. McKee determined that Item 1 of the Stipulated Agreement had been complied with. Therefore, the Hearings Officer finds that Item 1 of the Stipulated Agreement has been complied with.

Mr. McKee explained that the purpose of Item 2 in the Stipulated Agreement was to encourage the respondents to obtain all necessary permits. The parties agreed to July 1, 2009 as the date to determine issue status for all necessary permits. The penalty for failing to meet the deadline is \$5,000.00. The Hearings Officer modifies the July 1, 2009 deadline, changing it to July 6, 2009, so that the deadline follows the date this Amended Order becomes final and effective.

Mr. McKee explained that Item 3 concerned requiring that construction start by August 1, 2009. The penalty for failing to meet the August 1, 2009 deadline is \$5,000.00.

Mr. McKee explained that Item 4 concerned demolition on the property. Mr. Moran had shown Mr. McKee project plans to demolish the property down to one wall, and from there to commence building again. Mr. McKee stated that there were no permits needed or inspections required at the demolition stage. Mr. McKee stated that if Mr. Moran could demonstrate to Mr. McKee with a site inspection that the demolition was complete, the requirement in Item 4 would be satisfied. Mr. McKee explained that this penalty is intended to encourage continued progress on the project. The penalty for failing to meet the October 1, 2009 deadline is \$10,000.00.

Mr. McKee recommended that the \$1215.00 cost for the hearing and the \$1,000.00 penalty be dismissed. He stated that there were some communication difficulties with his original conversation with Mr. Moran. Mr. McKee had asked Mr. Moran to submit a schedule so that Mr. McKee could draft a stipulated agreement. Mr. McKee stated that if the schedule was received by a certain date, then the hearing would be dismissed. Mr. McKee did not receive the schedule, and so did not request that the hearing be dismissed. But Mr. McKee stated that he had reason to believe, in giving the benefit of the doubt to Mr. Moran, that Mr. Moran submitted the schedule before the time that Mr. McKee asked for the hearing to occur. If Mr. McKee had received the schedule before filing for the hearing, then these two penalties would not have been included.

Mr. McKee explained that Item 5 reiterated cost recovery for the five housing and dangerous building inspections, at \$94.56 per inspection, for a total of \$472.80. Mr. McKee explained that the \$472.80 would be the only monetary penalty when the Order took effect.

Finally, Mr. McKee requested that the Hearings Officer retain jurisdiction in this case until November 1, 2009.

In order to reflect the Stipulated Agreement and the modifications detailed above, the \$1,000.00 civil penalty with payment due on May 22, 2009 that was included in the June 9, 2009 Order is canceled with this Amended Order. The \$5,000.00 civil penalty with payment due on May 26, 2009 that was included in the June 9, 2009 Order is also canceled with this Amended Order. This \$5,000.00 civil penalty shall be applied as a \$5,000.00 civil penalty with payment due July 1, 2009 should the deadline not be met.

The Hearings Officer, having reviewed the Stipulated Agreement and the requested modifications detailed above, agrees that it was in the best interests of the City and the respondents that the Stipulated Agreement and the

requested modifications became part of this Amended Order. The Hearings Officer incorporates the Stipulated Agreement and the requested modifications as a part of this Amended Order.

ORDER AND DETERMINATION:

1. The Hearings Officer has accepted the "Stipulated Agreement for Repairs" dated May 14, 2009 and signed May 18, 2009 (subject to the modifications detailed above), a copy of which is attached to this Amended Order and made a part thereof.
2. The \$1,000.00 civil penalty with payment due on May 22, 2009 that was included in the June 9, 2009 Order is canceled by this Amended Order.
3. The \$5,000.00 civil penalty with payment due on May 26, 2009 that was included in the June 9, 2009 Order is canceled by this Amended Order. This \$5,000.00 civil penalty which is included in Item 2 of the Stipulated Agreement is hereby imposed, and shall be suspended until 4:30 p.m. on July 6, 2009. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on July 6, 2009 indicating all necessary permits have been issued, then this \$5,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on July 6, 2009, then the \$5,000 civil penalty shall become due and payable.
4. A \$5,000.00 civil penalty which is included in Item 3 of the Stipulated Agreement is hereby imposed, and shall be suspended until 4:30 p.m. on August 1, 2009. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on August 1, 2009 indicating that construction has begun, then this \$5,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on August 1, 2009, then the \$5,000 civil penalty shall become due and payable.
5. A \$10,000.00 civil penalty which is included in Item 4 of the Stipulated Agreement is hereby imposed, and shall be suspended until 4:30 p.m. on October 1, 2009. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on October 1, 2009 indicating that the demolition portion of the project is completed, then this \$10,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on October 1, 2009, then the \$10,000 civil penalty shall become due and payable.
6. A \$472.80 civil penalty (cost recovery for the five housing and dangerous building inspections, at \$94.56 per inspection) which is included in Item 5 of the Stipulated Agreement is hereby imposed, and is due and payable immediately. If the \$472.80 civil penalty is not paid, this amount shall become a personal lien on the property owner, Jeff Moran.
7. The Hearings Officer retains jurisdiction in this case until November 1, 2009. Unless further action is requested by the City or Respondent on or before 4:30 p.m. November 1, 2009, the case will be closed on November 4, 2009.
8. This Amended Order has been mailed to the parties on June 22, 2009, and shall become final and effective on July 6, 2009.

9. This Amended Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 22, 2009


 Ian Simpson, Hearings Officer

IS:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint with List of Violations	McKee, Mitchell R.	Received
2	Notification List	McKee, Mitchell R.	Received
3	Photo	McKee, Mitchell R.	Received
4	Multnomah Assessor Property Information	McKee, Mitchell R.	Received
5	6/26/08 Photos	McKee, Mitchell R.	Received
6	9/16/08 Photos	McKee, Mitchell R.	Received
7	2/25/09 Photos	McKee, Mitchell R.	Received
8	TRACS printout	McKee, Mitchell R.	Received
9	TRACS printout	McKee, Mitchell R.	Received
10	Case History	McKee, Mitchell R.	Received
11	7/1/08 Notice of Violation - Property Maintenance Code letter, McKee to Morans	McKee, Mitchell R.	Received
12	2/27/09 Referral of Housing Case to Code Hearings Officer letter, McKee to Morans	McKee, Mitchell R.	Received
13	8/1/08 Invoice	McKee, Mitchell R.	Received
14	9/1/08 Invoice	McKee, Mitchell R.	Received
15	12/1/08 Invoice	McKee, Mitchell R.	Received
16	1/1/09 Invoice	McKee, Mitchell R.	Received
17	2/1/09 Invoice	McKee, Mitchell R.	Received
18	3/17/09 Revised Invoice	McKee, Mitchell R.	Received
19	4/9/09 Invoice	McKee, Mitchell R.	Received
20	8/1/08 Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	McKee, Mitchell R.	Received
21	Mailing List	Hearings Office	Received
22	Hearing Notice	Hearings Office	Received
23	Notice of Rights and Procedures	Hearings Office	Received
24	Memorandum w/Stipulated Agreement attached	McKee, Mitchell R.	Received
24a	Stipulated Agreement	McKee, Mitchell R.	Received
25	Copy of email from Jeff Moran to McKee	McKee, Mitchell R.	Received
26	Photos (2 pgs)	McKee, Mitchell R.	Received
27	Revised Stipulated Agreement	McKee, Mitchell R.	Received
28	Memo to HO	McKee, Mitchell R.	Received
28a	Copy of Exh. 27 (Revised Stipulated Agreement)	McKee, Mitchell R.	Received
28b	Violation correction form	McKee, Mitchell R.	Received
29	6/17/09 memo to McKee & copy of check #3956	McKee, Mitchell R.	Received