

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF BARRY TRESCH

CASE NO. 1120008

DESCRIPTION OF VEHICLE: Ford F150 (OR 593DGU)

DATE OF HEARING: January 24, 2012

APPEARANCES:

Mr. Barry Tresch, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Tresch appeared at the hearing and testified on his own behalf. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Tresch and the documents admitted into evidence (Exhibits 1 through and including 8).

Summary of Evidence:

Mr. Tresch submitted a Tow Hearing Request Form, Exhibit 1, and accompanying letter, Exhibit 2, regarding the tow of his vehicle on January 7, 2012, from NW Glisan Street. Mr. Tresch writes in his request that he "verified" that his vehicle was properly parked on January 6, 2012, when he parked it. Mr. Tresch writes that it was dark but he is "absolutely positive" that he was "in no way blocking the driveway." Mr. Tresch appeared at the hearing and stated that the photos from Parking Enforcement fail to fully show the driveway where he was parked. Mr. Tresch testified that the driveway appears to be a single vehicle driveway that was widened to accommodate more vehicles. Mr. Tresch testified that the vehicle that he appears to be blocking in, based on the photos in Exhibit 7, is actually parked in an area that is not aligned with the driveway. Mr. Tresch stated that if the vehicle in the driveway backed straight out it would cross over a gravel easement, a tree and the curb. Mr. Tresch indicated that he believes the true outer edge of the driveway is directly in front of the bumper of his vehicle. Mr. Tresch stated that he does not understand the measurements provided by Parking Enforcement. Mr. Tresch showed the Hearings Officer two photos contained on his phone to further illustrate the area he described. The photos on Mr. Tresch's phone showed the area where he was parked, without any vehicles in the driveway.

The City submitted Exhibits 5 through, and including, 7 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report which indicates that Mr. Tresch's vehicle was towed from 2249 NW Glisan on January 7, 2012, for the violation of "block driveway." The narrative portion of the report indicates that Mr. Tresch's

vehicle was "2ft into the driveway apron" making it "extremely difficult and unsafe for a reasonable person to pull in or out of the driveway." The report indicates that the measurement of two feet into the apron was taken from the start of the apron to the tip of the front bumper of Mr. Tresch's vehicle. Exhibit 6 is a copy of the citation issued to Mr. Tresch on January 7, 2012. Exhibit 7 contains four photos of Mr. Tresch's vehicle prior to towing. The photos show Mr. Tresch's vehicle parked at the edge of a driveway. The photos show an area of the curb next to Mr. Tresch's vehicle which is painted yellow, and a winged portion of the driveway. The photos show a vehicle parked in the driveway which appears to be partially blocked in by Mr. Tresch's vehicle.

Applicable Law:

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.20.130 V., PCC 16.30.220B and PCC 16.90.105. PCC 16.20.130 V states that it is unlawful to park or stop a vehicle in front of any portion of a driveway ingress/egress to the public right-of-way. PCC 16.90.105 defines a "driveway" for the purposes of Title 16. In summary, PCC 16.90.105 defines a "driveway" as an access extending from a public right-of-way onto private or public lands for the purpose of gaining vehicular access to such areas and reasonably designated at the property line so as to be an obvious open for access. For the purposes of enforcement a driveway extends from one curb return to the other and if winged, includes the wings. PCC 16.30.220 A permits a vehicle to be towed without prior notice and stored, at the owner's expense, when the vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic.

Findings of Fact and Conclusions of Law:

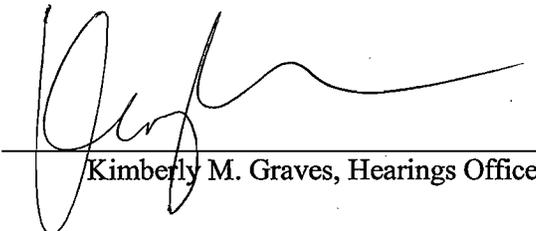
The Hearings Officer finds that on January 6, 2012, Mr. Tresch parked his vehicle on NW Glisan Street; a public right-of-way. The Hearings Officer finds that Mr. Tresch's vehicle was parked adjacent to a winged driveway. The Hearings Officer finds that no evidence in the record clearly establishes the outer boundary of the driveway where Mr. Tresch's vehicle was parked. The Hearings Officer notes that the photos in Exhibit 7 leave open to the Hearings Officer's interpretation where the driveway ends and the curb begins. The Hearings Officer appreciates the detailed measurements reported by Parking Enforcement; however, based on the photos, the Hearings Officer is unable to determine where the measurements were taken from. The Hearings Officer finds that the yellow painted curb does not represent the outer edge of the driveway, and that the apron of the driveway is unclear. The Hearings Officer finds that without a clear indication of the driveways outer edge, the City has failed to meet its burden to prove that Mr. Tresch's vehicle was parked in front of any portion of the driveway. The Hearings Officer finds the tow of Mr. Tresch's vehicle to be invalid.

Order:

Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: January 25, 2012
KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 366

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Tresch, Barry	Received
1a	Letter	Tresch, Barry	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Parking Violation #HA10684992	Parking Enforcement	Received
7	Photos	Parking Enforcement	Received
8	Tow Invoice	Tresch, Barry	Received