



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. JOHN VAN ENIGE, IV, ET AL, respondent(s)

CASE NO. 2120003

[Bureau Case No. 11-190114-HS]

PROPERTY: 415 NE 80th Avenue

LEGAL DESCRIPTION:

MT Tabor Villa Anx, Block 14, Lot 21; 1N2E32DA-04900,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: February 22, 2012

APPEARANCES:

Respondent did not appear

Mr. Mitchell R. McKee, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mitchell McKee ("McKee"), Senior Housing Inspector for the City of Portland Bureau of Development Services, appeared and testified on behalf of the City. Ms. Amber Norling ("Norling") appeared and testified at the request of McKee. Mr. John Van Enige, IV ("Enige"), Respondent, did not appear at the hearing.

McKee requested the Hearings Officer admit all of the exhibits into the evidentiary record. The Hearings Officer found all of the submitted exhibits to be relevant to this case. Exhibits 1 through and including 21 were admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of McKee and Norling and the admitted documents (Exhibits 1 through and including 21).

The City submitted a Complaint alleging that specified violations of the Portland City Code exist at 415 NE 80th Avenue, Portland, Oregon ("Subject Property") (Exhibit 1, including Attachment A). The violations, as summarized by the Hearings Officer, are as follows (violation numbers correspond to Exhibit 1, Attachment A):

1. **Fire Life Safety Violation:** yard is being used for camping; and

2. Portions of gutters/downspouts clogged; and
3. Portions of gutters/downspouts damaged, deteriorated, and/or missing; and
4. **Health Sanitation Violation:** trash/debris on exterior of property; and
5. Portions of roof are deteriorated/moss covered; and
6. **Fire Life Safety Violation:** portions of porch decking/stairs are damaged, deteriorated, and/or missing; and
7. **Health Sanitation Violation:** trash/debris on interior of property; and
8. **Fire Life Safety Violation:** dwelling lacks water service; and
9. Windows are in disrepair with broken sashweight cords; and
10. Window panes are broken/missing; and
11. Portions of wall/ceiling coverings are damaged, deteriorated and/or missing; and
12. Interior door is broken, deteriorated and/or missing; and
13. Portions of several door hardware, jamb and casings are damaged, deteriorated or missing; and
14. **Fire Life Safety Violation:** second floor stairs lacks rails; and
15. Fireplace glass screen is damaged; and
16. Attic access cover is missing; and
17. **Fire Life Safety Violation:** basement steps lack handrail; and
18. Basement bathroom fixtures are unusable; and
19. **Fire Life Safety Violation:** open drain pip in basement allows entrance of sewer gases; and
20. **Health Sanitation Violation:** excessive mold growth in basement; and
21. Furnace service cover is missing or damaged; and
22. Basement walls are damaged and punctured to exterior; and
23. **Fire Life Safety Violation:** unapproved and/or excessive use of extension cords; and
24. **Fire Life Safety Violation:** unimproved splices in wiring; and
25. Permit Required; **Fire Life Safety Violation:** unapproved electrical wiring; and
26. Junction boxes lack cover plates, exposing wires; and
27. **Fire Life Safety Violation:** electrical service fuse box lacks cover.

McKee testified that in November 2011 he received notice from the Portland Police Bureau that they had responded to the Subject Property on multiple occasions and that there was transient activity and drug use occurring at the Subject Property. McKee testified that the City opened a case and on November 3, 2011, he observed the outside of the Subject Property and took photos of numerous violations. McKee testified that he sent a letter on November 7, 2011 (Exhibit 10) to the owner of the property, John Van Enige, IV. McKee testified that the letter was mailed to Enige at the Subject Property, as that was the only address listed for Enige in the City/County records. McKee testified that he did not receive any response from Enige. McKee testified that on November 30, 2011, Portland Police again responded to the Subject Property and took numerous exterior photos. McKee testified that on December 16, 2011, the police located Enige in jail and took him to the Subject Property to assist with ending the transient activity in the location. McKee testified that the police asked Enige to order everyone out of the Subject Property, and that a total of 47 people were removed. McKee testified that on December 16, 2011, the police took numerous photos of the interior of the Subject Property (Exhibit 6) which showed additional violations. McKee testified that on January 4, 2012, he sent an additional letter to Enige (Exhibit 11), but that he did not receive any response from Enige. McKee testified that he visited the Subject Property again the day before the hearing and took additional exterior photos (Exhibit 19). McKee referenced the various photo exhibits to demonstrate the existence of the violations. McKee indicated during his testimony that it appears that the tents have been removed from the backyard, so he does not want the Hearings Officer to consider violation #1. McKee also testified that he was able to confirm that the Subject Property does have active water service, so he does not want the Hearings Officer to consider violation #8. McKee added, however, that despite active water service, people are urinating and defecating on the ground outside the Subject Property, and that one such person told a neighbor that the toilets in the home do not work. McKee indicated that he believes the plumbing in the Subject Property is not functioning. McKee also testified that he was unable to personally verify the existence of violation #9, so he would like to withdraw that violation.

Norling testified at the request of McKee. Norling testified that she is an employee of Routh Crabtree Olsen, P.C. and that the company is representing Wells Fargo in its foreclosure action against Enige related to his failure to pay the mortgage since March 2009 for the Subject Property. Norling testified that a judicial foreclosure is pending for the property, and that the foreclosure action was filed in July or August 2011. Norling indicated that on January 10, 2012, Wells Fargo sent a letter (Exhibit 18) to Enige indicating that code violations exist at the Subject Property and that repairs of all violations must be made within 30 days. Norling testified that no response was received from Enige. Norling testified that the next step in the foreclosure action is to service Enige with a summons and complaint. Norling testified that as of the date of the hearing, Enige has not been located, and service has not occurred. (Exhibit 20) Norling testified that the mortgage for the Subject Property was sold to Wells Fargo from CMG Mortgage. Norling testified that the mortgage allows Wells Fargo to enter the property to make necessary repairs and to maintain the property if the owner fails to do so. Norling testified that she did not have a copy of the Wells Fargo Deed of Trust present at the hearing, but that she did have a copy of the original Deed of Trust to CMG Mortgage. (Exhibit 21) Norling testified that page 7 of 15 contains the above-referenced clause which permits Wells Fargo to enter the property to make repairs, and that the same clause exists in the Wells Fargo Deed of Trust. Norling testified that Wells Fargo has an interest in remedying the code violations, but that they will not enter the home as long as it is occupied. Norling testified that on February 11, 2012, Wells Fargo inspected the exterior of the property and found the property to still be occupied.

Chapter 29 of the Portland City Code lists the Housing Maintenance Requirements placed on owners of property located within the City of Portland. PCC 29.30.005 provides, "A. An owner may not maintain or permit to be maintained, in violation of this Chapter, any residential property. B. All residential property shall be maintained to the building, mechanical, plumbing and electrical code requirements in effect at the time of construction, alteration, or repair." The Hearings Officer finds that the following violations of Chapter 29, as set forth in Exhibit 1, Attachment A, do exist at the Subject Property: violations 2 through, and including, 7, and 10 through, and including, 27. The Hearings Officer finds that the additional violation of failing to maintain working plumbing facilities exists.

McKee summarized the relief requested in Exhibit 1. McKee requested that the Hearings Officer order: (1) Respondent correct all of the violations listed on Exhibit 1, Attachment A, (2) Respondent repair the plumbing to working order, and (3) Respondent obtain weekly trash service. McKee requested that the Hearings Officer order repair of the plumbing, and restoration of garbage service to be completed within fifteen (15) days. McKee requested that the Hearings Officer order Respondent to fix the most egregious Fire Life Safety/Health Sanitation violations within 30 days, including violations 4, 7, 19, 23, 24, 25, and 27. McKee requested that the Hearings Officer order all remaining violations be corrected within sixty (60) days. In the event that the plumbing is not repaired, and garbage service is not obtained within 15 days, the most egregious Fire Life Safety/Health Sanitation violations are not fixed within 30 days, and/or the remaining violations are not remedied within 60 days, McKee requested that the Hearings Officer order the Subject Property to be vacated. McKee asked that in the event the City vacates the Subject Property, the City have the right to seek all costs related to the vacation process. McKee requested that the Hearings Officer assess civil penalties in an amount sufficient to reimburse the City for costs associated with the Subject Property, including \$725.00 for inspection services, \$1,215.00 for the cost of taking this case to hearing, and a \$1,000.00 civil penalty. The total civil penalties amount to \$2,940.00. McKee stated that he lowered the civil penalty from \$2,000.00 to \$1,000.00, as he had originally requested in Exhibit 1.

McKee submitted documentation showing that the City has filed liens against the Subject Property of approximately \$18,000.00 (see Exhibit 12).

Enige did not appear at the hearing. McKee testified that two letters, Exhibits 10 and 11, were mailed to Enige at the Subject Property, and that Enige did not contact the City in response to either notice. McKee testified that the property was also posted with notice of the hearing, by attaching the notice of hearing to the exterior of the home. McKee testified that Enige did not contact the City after the property was posted. McKee testified that he has had

no contact with Enige since the case was opened with the City. On February 8, 2012, the Hearings Office mailed Enige a Notice of Hearing to the Subject Property. The Notice was not returned, and Enige did not contact the Hearings Office at any time about the hearing.

The Hearings Officer finds, in a Housing compliance case, that she has the authority to order compliance, abatement, and repairs at real property located within the City of Portland (PCC 22.05.010). The Hearings Officer finds that this is a Housing compliance case and the Subject Property is located within the City of Portland. The Hearings Officer finds, in a Housing compliance case, that she has the authority to order a structure vacated if it appears to the Hearings Officer that such measure is reasonably required to protect the health, safety, or property of the general public, residents of the structure, or that of adjacent landowners and residents (PCC 22.050.101). The Hearings Officer finds, in a Housing compliance case, that she has the authority to assess civil penalties if violations are found to exist (PCC 22.06.010).

The Hearings Officer finds, based upon the evidence in the record, that the alleged violations (2 through, and including, 7, and 10 through, and including, 27, and an additional violation of failing to maintain working plumbing facilities) exist at the Subject Property. The Hearings Officer finds that numerous violations create serious fire, life and safety risks to the occupant(s) and neighboring properties. The Hearings Officer finds that numerous violations create health and sanitation risks to the occupant(s) and neighboring properties.

The Hearings Officer finds, based upon the evidence in the record, that the property is currently subject to a foreclosure proceeding, and that the mortgage on the property has not been paid for almost 3 years. The Hearings Officer finds that Enige has not demonstrated any intent to remedy the violations on the property, and that significant liens against the property exist. The Hearings Officer finds that correction of the existing violations will require additional financial expenditures, and that the likelihood of correction of the violations is low based on Enige's failure to respond to either the City or Wells Fargo about the condition of the Subject Property.

The Hearings Officer finds that it is appropriate to order the following: The Hearings Officer orders that unless properly functioning plumbing is restored to the Subject Property within fifteen (15) days, all structures at the Subject Property shall be vacated by the City. The Hearings Officer orders that unless weekly trash service is restored to the Subject Property within fifteen (15) days, all structures at the Subject Property shall be vacated by the City. The Hearings Officer orders that unless the most egregious Fire Life Safety violations are corrected within thirty (30) days, all structures at the Subject Property shall be vacated by the City. (See violations 4, 7, 19, 23, 24, 25, and 27). The Hearings Officer orders that unless all remaining violations set forth in Exhibit 1, Attachment A are corrected in a timely manner, all structures at the Subject Property shall be vacated by the City. The Hearings Officer finds sixty (60) days to be a reasonable time to correct all remaining violations listed on Exhibit 1, Attachment A.

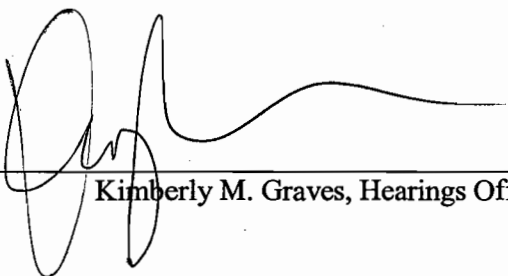
The Hearings Officer finds that it is reasonable to assess the amount of \$2,940.00 (\$725.00 for the City cost of inspection services, \$1,215.00 for the cost of taking this case to hearing, and a \$1,000.00 civil penalty.) The Hearings Officer finds it reasonable and appropriate to retain jurisdiction in this case for 180 days.

ORDER AND DETERMINATION:

1. Respondent shall correct all violations listed on Exhibit 1, Attachment A and undertake all actions necessary and appropriate to prevent reoccurrence; and
2. A civil penalty in the amount of \$2,940.00 (\$1,940.00 reimbursement to the City for costs incurred + \$1000.00 additional civil penalty) is imposed and said penalty shall be payable by March 23, 2012, and if not paid, shall be made a lien against the Subject Property on March 26, 2012.

3. In the event that functioning plumbing and weekly garbage service are not restored to the Subject Property by April 16, 2012, the City is granted the right to vacate all structures at the Subject Property. In the event of vacation of the structures at the Subject Property, re-occupancy of any structure shall be prohibited until a representative of the Bureau of Development Services of the City of Portland certifies that all violations listed on Exhibit 1, Attachment A, have been corrected. During any period of vacation, access to the Subject Property may be granted, at the sole discretion of the City, only by written approval by the City.
4. In the event that the most egregious Fire Life Safety violations listed in Exhibit 1, Attachment A, (see violations 4, 7, 19, 23, 24, 25, and 27) are not corrected by April 21, 2012, the City is granted the right to vacate all structures at the Subject Property. In the event of vacation of the structures at the Subject Property, re-occupancy of any structure shall be prohibited until a representative of the Bureau of Development Services of the City of Portland certifies that all violations listed on Exhibit 1, Attachment A, have been corrected. During any period of vacation, access to the Subject Property may be granted, at the sole discretion of the City, only by written approval by the City.
5. In the event that all remaining violations listed in Exhibit 1, Attachment A, are not corrected by May 21, 2012, the City is granted the right to vacate all structures at the Subject Property. In the event of vacation of the structures at the Subject Property, re-occupancy of any structure shall be prohibited until a representative of the Bureau of Development Services of the City of Portland certifies that all violations listed on Exhibit 1, Attachment A, have been corrected. During any period of vacation, access to the Subject Property may be granted, at the sole discretion of the City, only by written approval by the City.
6. In the event of a City vacation of structures at the Subject Property (per paragraphs 3, 4 and 5 above), the City shall be entitled to submit a request for the imposition of a civil penalty assessment in an amount sufficient to cover its costs associated with the vacation process; the City shall submit documentation consistent with PCC 22.06.010.
7. In the event of a City vacation of structures at the Subject Property (per paragraphs 3, 4, and 5, above), the City shall permit any legally authorized party access to the Subject Property to repair any of the violations listed in Exhibit 1, Attachment A. Such parties may include; Wells Fargo and any vendors/contractors/agents hired by or acting on behalf of Wells Fargo.
8. The Hearings Officer retains jurisdiction over this case until September 18, 2012, and unless a motion is filed by the City or Respondents to extend the Hearings Officer's jurisdiction, the case shall be closed on September 19, 2012.
9. This order has been mailed to the parties on March 9, 2012, and shall become final and effective on March 23, 2012. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
10. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 9, 2012



Kimberly M. Graves, Hearings Officer

KMG:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint	McKee, Mitch	Received
2	Notification List	McKee, Mitch	Received
3	Photo	McKee, Mitch	Received
4	Multnomah Assessor Property Information	McKee, Mitch	Received
5	11/3/11 Housing Inspection photos	McKee, Mitch	Received
6	12/16/11 Housing Inspection photos	McKee, Mitch	Received
7	Computer printout	McKee, Mitch	Received
8	Computer printout	McKee, Mitch	Received
9	Case History printout	McKee, Mitch	Received
10	11/7/11 Notice of Violation-Property Maintenance Code	McKee, Mitch	Received
11	1/4/12 Notice of Violation-Property Maintenance Code Referral of Housing Case to Code Hearings Officer	McKee, Mitch	Received
12	Lien Accounting	McKee, Mitch	Received
13	11-103694: PPB Special Report	McKee, Mitch	Received
14	Photos	McKee, Mitch	Received
15	Notice of Rights and Procedures	Hearings Office	Received
16	Hearing Notice	Hearings Office	Received
17	Mailing List	Hearings Office	Received
18	1/10/12 letter from Nichole Cochenet to Van Enige IV	McKee, Mitch	Received
19	2/21/12 Photos	McKee, Mitch	Received
20	Return of Due Diligence - Case No. 1201-00353	McKee, Mitch	Received
21	Deed of Trust	McKee, Mitch	Received