



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. JEAN CLAUDE L. THOYILELE, Respondent

CASE NO. 2120002

[Bureau Case No. 08-102127-HS]

PROPERTY: 6029 SE 85th Avenue

LEGAL DESCRIPTION:

Multnomah, Arleta PK2, Block 7, Lot 11, 1S2E16CC-05500,
R036801810

City of Portland, Multnomah County, Oregon

DATE OF HEARING: February 10, 2012

APPEARANCES:

Mr. Jean Claude L. Thoyilele (AKA Mr. Jean Claude L. Thoyilele-Wa-Thoyilele), Respondent

Mr. Mitch 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. Mr. Jean Claude L. Thoyilele ("Thoyilele"), Respondent, appeared and testified at the hearing on his own behalf.

At the hearing on February 10, 2012, Thoyilele provided a corrected, longer version of his name. This version is reflected above. The Hearings Officer is satisfied that Thoyilele is the appropriate Respondent for this matter and takes note of the correction. However, as previous City Code enforcement files, the current City Complaint, and the Multnomah County Property records on file all reflect Thoyilele's name as on file, the Hearing's Officer has determined it appropriate to use Thoyilele's name as submitted by the City.

McKee requested the Hearings Officer admit Exhibits 1 through and including 25 into the evidentiary record. Thoyilele objected to documents containing photos and descriptions of the Subject Property, as Thoyilele indicated that work is taking place on the Subject Property and the conditions at the Subject Property change

daily. The Hearings Officer found all of the submitted exhibits to be relevant to this case, either to establish the history of violations on the Subject Property and/or to prove the existence of current City Code violations. Exhibits 1 through and including 25 were admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of McKee and Thoyilele and the admitted documents (Exhibits 1 through and including 25).

The City submitted a Complaint alleging that specified violations of the Portland City Code exist at the 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. Health and Sanitation Violation: trash and debris on the exterior of the property
2. Portions of gutters/downspouts damaged/missing; and
3. Gutters and downspouts are not connected to an approved disposal system; and
4. Portions of exterior siding damaged/missing; and
5. Portions of exterior siding and trim paint are peeling; and
6. Front exterior door and threshold are deteriorated; and
7. Windows are damaged/missing; and
8. Fire Life Safety Violation: portions of the front walkway are inadequately structured; and
9. Fire Life Safety Violation: front walkway lacks required 36" high safety guardrail; and
10. Structural work done (rear addition) w/o required permits/inspection; and
11. Water heater installed w/o required permits/inspection; and
12. Health Sanitation Violation: foundation is open to rodent entry; and
13. Portions of wood supports in contact with earth are decayed/deteriorated; and
14. Fire Life Safety Violation: excavation at the rear of the dwelling without required permits/inspection; and
15. Plumbing lines/fixtures installed w/o required permits/inspection; and
16. Exterior door is poorly fitted; and
17. Fire Life Safety Violation: storage room lacks operable light fixture; and
18. Bathtub surround is not adequately sealed at tub and wall; and
19. Structural work done (front addition) w/o required permits/inspection; and
20. Fire Life Safety Violation: basement is being occupied as unapproved habitable space; and
21. Fire Life Safety Violation: electrical outlets lack cover plates; and
22. Fire Life Safety Violation: electrical service panelboard lacks required access and/or clearances; and
23. Light fixture on entry porch is damaged/inoperable; and
24. Light fixture in basement/kitchen/living area not properly installed; and
25. Fire Life Safety Violation: basement steps lack required safety handrail; and
26. Portions of wall/ceiling coverings are damaged/missing; and
27. Range hood vent is inoperable.

McKee testified that he has visited the Subject Property approximately four or five times in the six months preceding the hearing. McKee testified that he most recently visited the Subject Property on February 9, 2012, and again just prior to the hearing. McKee testified that when he visited the property on February 9, 2012, he did so with Thoyilele's permission, and he took photos to show the condition of the Subject Property and the code violations currently existing on the Subject Property. McKee testified that prior to the hearing when he visited the Subject Property, he noted that the Subject Property did not have running water. McKee testified that some of the violations alleged in the complaint have been resolved. McKee then referenced various photo exhibits to demonstrate the existence of the violations. McKee indicated during his testimony that the violations listed as numbers 5, 6, 9, 16, 17, 22, 23 and 26 have been resolved to his satisfaction, and he does not wish the Hearings Officer to consider such violations. Thoyilele did not provide any specific evidence to dispute McKee's testimony that the above violations exist at the Subject Property. Thoyilele testified that the Subject Property fell

into disrepair when he was out of the state for an extended period of time. Thoyilele testified that, upon returning to the state, he found that people were living at the Subject Property without his permission, and he engaged in a lengthy court process to have the individuals removed from the Subject Property. Thoyilele testified that since regaining possession of the Subject Property, he has been attempting to make the necessary repairs, however he has encountered a number of obstacles and has not had sufficient funds to get the necessary work completed. Thoyilele testified that he believes that he can have the existing code violations resolved in thirty (30) days.

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 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 24, 25, and 27

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 restore water service to the Subject Property and remove all trash and debris from the exterior of the property, and (3) Respondent obtain permits on all permit-required violations listed in Exhibit 1, Attachment A. McKee requested that the Hearings Officer order restoration of water service and removal of all trash and debris to be completed within ten (10) days. McKee requested that the Hearings Officer order Respondent to obtain permits for all permit-required violations within 30 days, and order that all remaining violations be corrected within ninety (90) days. In the event that restoration of water service is not corrected within 10 days and/or the remaining violations are not remedied within 90 days, McKee requested that the Hearings Officer order the Subject Property to be vacated. 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 the sum of \$1,160 for inspection services and \$1,215 for the cost of taking this case to hearing. McKee stated that the City would waive the request for an additional civil penalty in the amount of \$5,000 as set forth in the relief requested in Exhibit 1.

McKee testified that the lack of water at the Subject Property creates health and sanitation risks to any occupant(s) and neighbors of the Subject Property. McKee testified that the City opened a case for violations at the Subject Property in January 2008. McKee testified that there was a previous hearing and, in October 2009, a Hearings Officer ordered the property vacated. McKee testified that the City did not follow through with the order to vacate and that many of the violations listed in Exhibit 1, Attachment A have existed since 2009. McKee submitted documentation showing that the City has filed liens against the Subject Property in the amount of \$47,690.60 (see Exhibit 19) and that real property taxes assessed against the Subject Property have not been paid for 2011 (\$1,738.58) (see Exhibit 3).

Thoyilele testified that when he gained possession of the Subject Property after the court removed the unauthorized residents, he was left with electrical and water bills that were greater than \$1000 each. Thoyilele testified that he was able to enter into a payment plan with the electrical company in order to have electricity restored to the property, but that he has been unable to reach an agreement with the respect to the water bill. Thoyilele did not indicate how he intended to have water service restored to the Subject Property. Thoyilele stated that there is a mortgage on the Subject Property and that he is not current on his payments.

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 financial obligations against the Subject Property are substantial (\$105,000.00 mortgage for which Respondent is currently in default, \$47,690.60 for City liens and \$1,738.58 for property taxes) and the value of the Subject Property is approximately \$109,630.00 (Exhibit 3). The Hearings Officer finds that correction of violations will require additional financial expenditures. The Hearings Officer finds that violations of City code, at the Subject Property, have existed for an extended period of time. The Hearings Officer finds that the likelihood of correction of the violations to be low based upon Thoyilele's financial condition. The Hearings Officer finds the likelihood of correction of the violations to be low based upon the history of this file; Respondent's failure to correct all violations since 2008.

The Hearings Officer finds that numerous violations set forth in Exhibit 1, Attachment A, create serious fire, life and safety risks to the occupant(s) and neighboring properties. The Hearings Officer finds that numerous violations set forth in Exhibit 1, Attachment A, create health and sanitation risks to the occupant(s) and neighboring properties. The Hearings Officer finds that unless water service is restored to the Subject Property within ten (10) days, all structures at the Subject Property shall be vacated by the City. The Hearings Officer finds that unless the 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 ninety days (90) to be a reasonable time to correct all remaining violations listed on Exhibit 1, Attachment A (see violations 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 24, 25, and 27).

The Hearings Officer finds that it is reasonable to assess the amount of \$2,375.00 (\$1,160.00 for the City cost of inspections and \$1,215.00 for the City cost to take this case to hearing) as a civil penalty. The Hearings Officer finds it reasonable and appropriate to retain jurisdiction in this case until August 28, 2012.

ORDER AND DETERMINATION:

1. Respondent shall correct all remaining violations listed on Exhibit 1, Attachment A (violations 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 24, 25, and 27) and undertake all actions necessary and appropriate to prevent reoccurrence; and
2. A civil penalty in the amount of \$2,375.00, as reimbursement of City expenses incurred, is imposed and said penalty shall be payable by March 1, 2012, and if not paid, shall be made a lien against the Subject Property on March 2, 2012.
3. In the event that water service is not restored to the Subject Property by March 12, 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 all remaining violations listed in Exhibit 1, Attachment A, (see violations 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 24, 25, and 27) are not corrected by May 30, 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

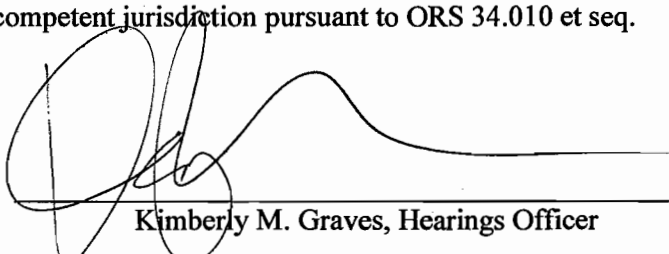
period of vacation access to the Subject Property may be granted, at the sole discretion of the City, only by written approval by the City.

5. The Hearings Officer retains jurisdiction over this case until August 28, 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 August 29, 2012.
6. This order has been mailed to the parties on February 16, 2012, and shall become final and effective on March 1, 2012. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
7. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 16, 2012

KMG:rs/jeg

Enclosure



Kimberly M. Graves, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint City Code Violation	McKee, Mitch	Received
2	Notification List for the Property	McKee, Mitch	Received
3	Multnomah Assessor Property Information	McKee, Mitch	Received
4	Photo	McKee, Mitch	Received
5	6029 SE 85th Ave: Inspection 1/10/2008, 32 pages	McKee, Mitch	Received
6	Tracs printout	McKee, Mitch	Received
7	Tracs printout	McKee, Mitch	Received
8	Tracs printout	McKee, Mitch	Received
9	08-102127 - HS Case History	McKee, Mitch	Received
10	Notice of Violations - Property Maintenance Code	McKee, Mitch	Received
10a	List of Violations	McKee, Mitch	Received
11	Notice of Violations - Property Maintenance Code	McKee, Mitch	Received
11a	List of Violations	McKee, Mitch	Received
12	Notice of Violation - Property Maintenance Code		
	Additional Violations	McKee, Mitch	Received
12a	List of Violations	McKee, Mitch	Received
13	Notice of Violation - Property Maintenance Code Progress		
	Report	McKee, Mitch	Received
13a	List of Violations	McKee, Mitch	Received
14	Notice of Violation - Property Maintenance Code		
	Additional Violations	McKee, Mitch	Received
14a	List of Violations	McKee, Mitch	Received
15	Notice of Violation - Property Maintenance Code Referral		
	of Housing Case to Code Hearings Officer	McKee, Mitch	Received
15a	List of Violations	McKee, Mitch	Received
16	Notice of Violation - Property Maintenance Code Progress		
	Report	McKee, Mitch	Received
17	List of Violations	McKee, Mitch	Received
18	Fees, Penalties, Reviews, Appeals, and Waiver Information	McKee, Mitch	Received
19	Lien Accounting	McKee, Mitch	Received
20	Hearings Officer's Order, dated 10/30/09	McKee, Mitch	Received

<u>21</u>	<u>Mailing List</u>	<u>Hearings Office</u>	<u>Received</u>
<u>22</u>	<u>Hearing Notice</u>	<u>Hearings Office</u>	<u>Received</u>
<u>23</u>	<u>Notice of Rights and Procedures</u>	<u>Hearings Office</u>	<u>Received</u>
<u>24</u>	<u>Personal Service and Service By Posting</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>25</u>	<u>2/9/12 Photos</u>	<u>McKee, Mitch</u>	<u>Received</u>