



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. BENITA M. JOY, ET AL, respondents

CASE NO. 2120010

[Bureau Case No. 11-194885-HS]

PROPERTY: 851 NE 118th Avenue

LEGAL DESCRIPTION:

Hazelwood, Lot 9 TL 5500; 1N2E34AD-05500,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: May 4, 2012

APPEARANCES:

Mr. Mitchell R. McKee, for the City

Respondent did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mitchell R. McKee ("McKee"), Senior Inspector for the City of Portland Bureau of Development Services ("City"), appeared at the May 4, 2012, hearing and testified on behalf of the City. A Notice of the May 4, 2012, hearing was mailed to Benita M. Joy ("Respondent") and Occupants at 851 NE 118th Avenue, Portland, Oregon 97220 (the "Subject Property"). The mailed hearing notices were not returned as undeliverable by the United States Postal Service. The Hearings Officer learned, after the May 4, 2012 hearing, that a person did call the Hearings Office indicating that she was a tenant at the Subject Property and that someone would be appearing at the May 4, 2012, hearing. No person appeared at the May 4, 2012, hearing as a representative of Respondent. McKee stated that Respondent was deceased.

The Hearings Officer makes this decision based upon the testimony of McKee and the documents admitted into the evidentiary record (Exhibits 1 through and including 20).

McKee testified that a residence and garage (the "Improvements") exist at the Subject Property. McKee testified that no public water is legally connected to the Improvements at the Subject Property. McKee stated the Improvements lack legally operable electrical service at the Subject Property. McKee stated that a number of

Portland City Code ("PCC") title 29 violations exist at the Subject Property (see Exhibit 1, Attachment A). McKee stated that the Improvements are occupied. McKee stated that the existence of the violations create serious fire, life, safety and health/sanitation risks to occupants and visitors at the Subject Property and also create safety and sanitation risks to neighboring properties.

The Hearings Officer finds, as of April 25, 2012 (last inspection date by McKee), that all of the alleged violations listed in Exhibit 1, Attachment A, existed at the Subject Property. The Hearings Officer finds that alleged violations 1, 2, 12, 13, 16, 18 and 20 create serious fire, life and safety risks to any occupants of the Improvements at the Subject Property. The Hearings Officer finds that alleged violations 6, 7, 8 and 9 create health sanitation risks to any occupants at the Subject Property. The Hearings Officer finds that the lack of water service and the accumulation of trash/debris at the Subject Property create health and sanitation risks to residents/guests/visitors at neighboring properties.

McKee reviewed the City's requested relief (Exhibit 1, paragraph 2). The Hearings Officer summarizes McKee's requested relief as follows:

1. order all violations set forth in Exhibit 1, Attachment A to be corrected; and
2. award civil penalties to allow the City to recover costs incurred through the date of the hearing (inspections and hearing costs); and
3. order the Improvements vacated; and
4. order a "security board-up" of the Improvements; and
5. award civil penalties to allow the City to recover costs associated with vacation and security board-up(s) of the Improvements at the Subject Property; and
6. award civil penalties to allow the City to recover costs associated with the relocation of tenants legally occupying the Improvements at the Subject Property; and
7. retain jurisdiction over this case for 120 days.

The Hearings Officer finds that it is reasonable to order all violations (Exhibit 1, Attachment A) to be corrected. The Hearings Officer finds that the violations create a serious fire, life and safety risk to any occupants of the Improvements at the Subject Property. The Hearings Officer finds that all violations must be immediately corrected.

McKee testified that the City had conducted four housing inspections and three nuisance inspections on or before the May 4, 2012, hearing. McKee stated that the City published rate for the cost of inspections is \$146.00. McKee testified that the cost to the City of bringing this case to hearing is \$1,215.00. The Hearings Officer finds that it is reasonable to order a civil penalty in the amount of \$2,237.00 to the City for costs incurred through the date of the May 4, 2012, hearing (7 inspections @ \$146 + hearing cost @ \$1,215).

The Hearings Officer finds that the existence of the violations listed in Exhibit 1, Attachment A create such a serious fire, life, safety and health/sanitation risk to the occupants that vacation of all Improvements at the Subject Property is necessary. The Hearings Officer finds that vacation and security board-up of all of the Improvements at the Subject Property should be completed in a timely manner. The Hearings Officer finds that all costs associated with the City executing the Hearings Officer's vacation and board-up order are recoverable by the City. The City must process all requests for additional civil penalties and/or liens per PCC 22.06.

The Hearings Officer finds that until all violations are corrected (correction is considered final upon receipt of a final inspection approval by the Bureau of Development Services), the City should have the right to summarily abate any additional nuisance violations and to summarily maintain the security board-up of all Improvements at the Subject Property. The Hearings Officer finds that the City should have the right to conduct an additional vacation of any/all Improvements at the Subject Property if any/all Improvements are reoccupied prior to the date this case is closed by the Hearings Office. The Hearings Officer finds that any costs associated with additional vacation(s), additional summary nuisance abatement(s) or additional security board-up(s) at the Subject Property

should be recoverable by the City. The City shall process all requests for additional civil penalties and/or liens per PCC 22.06.

McKee requested that the Hearings Officer retain jurisdiction over this case for 120 days. The Hearings Officer finds such request to be reasonable.

ORDER AND DETERMINATION:

1. All violations listed in Exhibit 1, Attachment A must be corrected.
2. A civil penalty in the amount of \$2,237.00 is assessed and any amount not paid by May 21, 2012, shall become a lien against the Subject Property on May 22, 2012.
3. All Improvements shall be vacated until all violations listed in Exhibit 1, Attachment A are corrected; correction means that a City inspection has occurred at the Subject Property and a representative of the Bureau of Development Services has signed a document indicating all violations have been corrected. The City shall complete a security board-up of all Improvements at the Subject Property; security board-up means securing all windows, doors and points of access for the purpose of restricting access. Following vacation and security board-up of all Improvements, access to the interior of the Improvements shall be permitted only to persons having received written permission from the City or are involved in official City business or public safety activities.
4. In the event of reoccupation of any Improvement at the Subject Property (prior to the date this case is closed by the Hearings Office), prior to the correction of all violations in Exhibit 1, Attachment A, the City shall have the right to vacate and security board-up the Improvements.
5. The City shall have the right to summarily abate, without the need to provide any additional notice or seek an administrative search warrant, any and all nuisances (prior to the date this case is closed by the Hearings Office) at the Subject Property.
6. The City shall have the right to relocate any tenant lawfully occupying an Improvement at the Subject Property.
7. The City shall have the right to seek one or more Supplemental Orders whereby the Hearings Officer assesses additional civil penalties arising from vacation(s), security board-up(s) or summary abatement(s) at the Subject Property. The City shall process all requests for additional civil penalties and/or liens per PCC 22.06.
8. The Hearings Officer shall retain jurisdiction over this case until 4:30 p.m. on September 20, 2012. Unless a party files a motion to extend the September 20, 2012 jurisdiction date, the case shall be closed on September 21, 2012.
9. This order has been mailed to the parties on May 4, 2012, and shall become final and effective on May 18, 2012. Any objections to this order must be in writing and received by the Code Hearings Officer 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: May 4, 2012

GJF:c1

Enclosure



Gregory J. Frank, Hearings Officer

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	2/28/12 Photos	McKee, Mitch	Received
6	11/22/11 Photos	McKee, Mitch	Received
7	3/15/12 Photos	McKee, Mitch	Received
8	TRACS printout	McKee, Mitch	Received
9	TRACS printout	McKee, Mitch	Received
10	Case History	McKee, Mitch	Received
11	11/22/11 Notice of Violation-Property Maintenance Code letter, Edgar Bolden to Joy	McKee, Mitch	Received
12	2/29/12 Additional Violations letter, McKee to Joy	McKee, Mitch	Received
13	City Lien Report	McKee, Mitch	Received
14	Mailing List	Hearings Office	Received
15	Hearing Notice	Hearings Office	Received
16	Notice of Rights and Procedures	Hearings Office	Received
17	Personal Service and Service By Posting	McKee, Mitch	Received
18	4/26/12 Additional Violation letter, McKee to Joy	McKee, Mitch	Received
19	4/25/12 photos	McKee, Mitch	Received
20	TRACS printout	McKee, Mitch	Received