



# 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. SHAWN SHORE, respondents

CASE NO. 2120001

[Bureau Case No. 11-177129 VI]

PROPERTY: 26901 NW St. Helens Road, Scappoose, Oregon

### LEGAL DESCRIPTION:

Section 25 3N 2W, TL 1100 6.01 Acres,  
City of Scappoose, Multnomah County, Oregon

DATE OF HEARING: February 2, 2012

### APPEARANCES:

Mr. Shawn Shore, Respondent

Ms. Lisa Dibert, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Lisa Dibert ("Dibert"), Program Specialist for the City of Portland Bureau of Development Services (the "City"), appeared at the hearing and testified on behalf of the City. Ms. Erin Mick ("Mick") Environmental Technician for the City of Portland Bureau of Development Services appeared at the hearing and testified at the request of Dibert. Mr. Shawn Shore ("Shore") appeared at the hearing and testified on behalf of Respondents. Shore stated that he is the contract purchaser of the Subject Property, and that he is solely responsible for the real property commonly described as 26901 NW St. Helens Road, Scappoose, Oregon ("Subject Property"). Mr. Thomas H. Kerr and Ms. Pennee D. Kerr did not appear at the hearing. Mr. Kerr contacted the Hearings Office on January 13, 2012 and indicated that he does not own the Subject Property. The Hearings Officer finds, based on the representation of Shore, that Shore is the owner of the Subject Property and is thereby responsible for the wastewater treatment systems in place on the Subject Property. (see OAR 340-071-0100(102)(c) and 340-071-0120(2)). The Hearings Officer is removing Mr. and Mrs. Kerr as Respondents in this matter.

Dibert requested the Hearings Officer admit Exhibits 1 through and including 29 into the evidentiary record. Shore did not object to the proffered Exhibits. The Hearings Officer found all of the submitted exhibits to be relevant to this case either to establish the history of ownership and/or responsible party activity at the Subject Property and/or to prove the existence of Oregon Plumbing Specialty Code ("the Code") violations and/or violations of the Oregon Administrative Rules ("OARs") set forth by the Department of Environmental Quality to manage Onsite Wastewater Treatment Systems. Exhibits 1 through and including 29 were admitted into the evidentiary record.

The City submitted a Complaint alleging that specified violations of the Code and the OARs exist at the Subject Property (Exhibit 1). The violations, as summarized by the Hearings Officer, are as follows:

1. the onsite sewage disposal system has failed and is discharging untreated sewage onto the ground; and
2. permitted work has not been completed to remove public health hazard.

Dibert testified that a complaint about the conditions on the Subject Property was received prior to November 2010. Dibert testified that Mick visited the property on February 1, 2011 and took the photos contained in Exhibit 11. Dibert testified that following the visit by Mick, Shore applied for a Land Feasibility Study (Exhibit 13d), and that a report from the study was completed and sent to Shore May 16, 2011 (Exhibit 13). Dibert testified that on October 24, 2011 a permit (Exhibit 17) was issued to Shore to remedy the violations identified in the Land Feasibility Study. Dibert testified that Mick visited the Subject Property again on January 3, 2012 and took photos of the condition of the property. Dibert testified that the work identified in Exhibit 17 is necessary to remedy the violations of the Code and the OARs and such work has not been completed.

Mick testified that she is an on-site sanitarian and an environmental health specialist. Mick testified that she conducts plan reviews and inspections for septic systems in the course of her employment. Mick testified that she became aware of the Subject Property following a complaint received by the City. Mick testified that in response to the complaint she sent a letter to Shore (Exhibit 10) in an effort to gain compliance. Mick testified that she did not receive any response to her letter. Mick testified that on February 1, 2011, she visited the Subject Property and took photos (Exhibit 11). Mick testified that the photos in Exhibit 11 show an area on the Subject Property in which sewage is pooling on the ground. Mick described a "failure" of a septic system under OAR 340-71-0100 as any time when there is "ponding of sewage at the site." Mick testified that the ponding of sewage on the ground creates a health hazard. Mick testified that after visiting the site she sent a second letter to Shore seeking compliance. Mick testified that she conducted a Land Feasibility Study of the Subject Property in May 2011 and sent a letter (Exhibit 13) to Shore outlining the type and size of system needed for the Subject Property to be in compliance with the Code and the OARs. Mick testified that she received an estimate for the cost of installing the new system on the Subject Property and that the estimated cost was over \$80,000.00. Mick testified that while a permit has been issued for the necessary system installation, the type of system described in Exhibit 13 has not been installed.

Shore testified that he purchased the Subject Property, under contract, in 2000 and that all of the structures/systems were existing at the time of the purchase. Shore testified that he has had considerable difficulty with the Subject Property and obtaining permits due to the lack of documentation about the history of the property. Shore offered Exhibit 30, a history of the Subject Property, into the evidentiary record. Dibert noted that much of Exhibit 30 was related to County code violations and not the violations at issue in this hearing, but did not object to the admission of Exhibit 30 into the evidentiary record. The Hearings Officer found Exhibit 30 to be relevant to set out the history of the systems on the Subject Property and/or the current conditions of the Subject Property. Exhibit 30 was entered into the evidentiary record. Shore testified that he has been unable to install the system detailed in the Land Feasibility Study because he does not have the financial means to do so. Shore testified that there are multiple septic systems on the Subject Property,

and that only one system is malfunctioning. Shore testified that he has diverted the piping from the malfunctioning system into the holding tank for a system which is functioning properly. Shore testified that diverting the system has eliminated the pooling of any sewage on the ground. Shore testified that the second to last page of Exhibit 30 shows the ground to be dry where sewage was previously pooling. Shore testified that the last page of Exhibit 30 shows the pipe for the malfunctioning systems diverted into the holding tank of a functioning system. Shore testified that he is almost bankrupt and that he has tried to sell the Subject Property, but was unable to do so because of the violations. Shore testified that he needs time to make enough money to install the new system.

The Sections of the OARs alleged to have been violated by the conditions present on the Subject Property are OAR 340-071-0130(1), (2), (3), (13), set forth below.

(1) "Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary."

(2) "Approved treatment and dispersal required. All wastewater must be treated and dispersed in a manner approved in accordance with these rules."

(3) "Prohibited discharges of wastewater. A person may not discharge untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into public waters. Such discharge constitutes a public health hazard and is prohibited."

(13) "Operation and maintenance. Owners of onsite systems must operate and maintain their systems in compliance with all permit conditions and applicable requirements in this division and must not create a public health hazard or pollute public waters. Operation and maintenance requirements for systems under WPCF permits are established by the WPCF permits required in this division."

The Sections of the Plumbing Specialty Code alleged to have been violated by the conditions present on the Subject Property are Sections 101.5 303 and 305, set forth below.

101.5.2 Health and Safety. "Whenever compliance with the provisions of this code fails to eliminate or alleviate a nuisance, or any other dangerous or insanitary condition that may involved health or safety hazards, the owner or the owner's agent shall install such additional plumbing and drainage facilities or shall make such repairs or alterations as may be ordered by the Authority Having Jurisdiction."

303 Disposal of Liquid Waste. "It shall be unlawful for any person to cause, suffer, or permit the disposal of sewage, human excrement, or other liquid wastes, in any place or manner, except through and by means of an approved drainage system, installed and maintained in accordance with the provisions of this code."

305.2 Sewers Required. "When a public sewer is not available for use, drainage piping from buildings and premises shall be connected to an approved private sewage disposal system."

On February 22, 2012, after reviewing the OARs and the Code, the Hearings Officer sent an Interim Order to the parties seeking argument about whether the Hearings Officer has the authority to impose the remedies sought by the City. The Hearings Officer gave the parties until March 23, 2012 to respond to the Interim

Order. On March 16, 2012, the Hearings Office received a letter from Shore seeking permission to decommission septic systems on the Subject Property. The Hearings Office labeled Shore's letter as Exhibit 31, and the Hearings Officer enters Exhibit 31 into the evidentiary record. The Hearings Officer forwarded Shore's letter to Dibert on March 20, 2012, and indicated in a letter to Shore that Dibert is the person to speak with about remedying the violations at the Subject Property. The Hearings Officer indicated in the March 20, 2012 letter that the parties had until March 30, 2012 to submit a stipulated agreement to the Hearings Officer, if the decommissioning was satisfactory to Dibert.

On March 23, 2012, the Hearings Officer received a memorandum from the City in response to the February 22, 2012 Interim Order. The Hearings Office labeled the memorandum as Exhibit 32. The City included a number of attachments with the memorandum which the Hearings Office labeled as Exhibits 33, 33a, 33b, and 33c. On March 30, 2012, having not received a stipulated agreement from either party, the Hearings Officer sent a copy of Exhibits 32 through, and including, 33c to Shore indicating that he would have until April 10, 2012 to submit any argument against the documents submitted by the City. Shore did not submit anything to the Hearings Office regarding the Exhibits submitted by the City. The Hearings Officer enters Exhibits 32, 33, 33a, 33b, and 33c into the evidentiary record. The Hearings Officer finds based on the information contained in Exhibit 32, that the City has the authority to pursue enforcement of violations of the OARs, and to seek vacation of a property which is found to be in violation.

The City, in Exhibit 32, requested that all references to violations of the Code be removed from Exhibit 1, and that the Hearings Officer review only the violations of the OARs. The Hearings Officer honors the request of the City, and considers only the violations of the OARs in making this decision. The Hearings Officer makes this decision based upon the testimony of Dibert, Mick and Shore and the admitted documents (Exhibits 1 through and including 34).

The Hearings Officer finds that sewage pooling on the ground at a multiple family property is likely to create a public health hazard. The Hearings Officer finds that sewage diverted to an insufficiently sized sewage system is likely to create a public health hazard. The Hearings Officer finds that sewage pooling on the ground is not properly treated and/or dispersed. The Hearings Officer finds that all violations of the OARs, as set forth in Exhibit 1, do exist at the Subject Property.

The City included in Exhibit 1 the relief they wished to have ordered by the Hearings Officer. The City requested that Respondent correct all of the violations and come into compliance with the Code in one of three ways, by: (1) Installing the new onsite sewage disposal system as outlined under issued permit 11-178681 SP and have the system inspected and approved by the Bureau of Development Services, (2) Installing temporary holding tanks, and properly maintain such holding tanks, until the new system (permit 11-178681 SP) could be properly installed on or prior to June 30, 2012, or (3) Vacate the property's dwellings and perform a security board-up of all structures. The City requests that the Hearings Officer order the correction of the violations be completed within fourteen (14) days. In the event that the violations are not corrected within 14 days, the City requested that the Hearings Officer order all structures at the Subject Property to be vacated. In the event that the Subject Property is vacated by the City, the City requests that any and all costs and associated fines and fees for the vacation and/or board up be recovered by the City. The City 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 \$2,062.32 for inspection services and the cost of taking this case to hearing. The City also requested a civil penalty in the amount of \$100,000 be assessed. The City requested that the civil penalty be suspended for a period of two weeks to allow the respondent time to correct the violations.

Mick testified that the pooling sewage and untreated sewage at the Subject Property creates a public health hazard to any occupant(s) and neighbors of the Subject Property. Dibert testified that the first complaint about the condition at the Subject Property was received in approximately November 2010. Dibert and Mick

testified that the sewage system has not been adequately repaired since November 2010, and that the violations on the property continue at this time. Mick testified that she obtained an estimate of the cost to install the new sewage system outlined in permit number 11-178681 SP and learned that the cost of installation would be roughly \$80,000.

Shore testified that he is unable to cover the cost of installing a new sewage system, and that he needs the income of the tenants on the property to survive. Shore testified that he needs time to make the money necessary to install the new system. Shore testified that he is almost bankrupt because of the issues with the property.

The Hearings Officer finds Shore is the sole owner of the Subject Property. The Hearings Officer finds that correction of violations will require costly additional financial expenditures.

The Hearings Officer finds that Exhibits 6, 6a, 6b, 6c, 6d, 7, 8, 8a, and 32 all address jurisdiction for the enforcement of violations of the OARs by the City. The Hearings Officer finds that the listed Exhibits provide authority by which the City is granted permission by the State and the County to enforce the OARs through the hearings process, and the Hearings Officer is granted the authority to order compliance, abatement, and repairs at real property located outside of the City of Portland (PCC 22.05.010). The Hearings Officer finds that this is a Code compliance case and the Hearings Officer has the authority to order correction of violations located on the Subject Property. The Hearings Officer finds, in a Code 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 22.05.010). The Hearings Officer finds, in a Code compliance case, that she has the authority to order cost recovery to the City for cost incurred by the City when acting pursuant to an order by the Hearings Officer (PCC 22.06.010).

The Hearings Officer finds that violations of the OARs, at the Subject Property, have existed for an extended period of time. The Hearings Officer finds the likelihood of correction of the violations to be low based upon Shore's financial condition. The Hearings Officer finds the likelihood of correction of the violations to be low based upon the history of this file; Shore's failure to correct all violations since 2010.

The Hearings Officer finds the violations of the OARs set forth in Exhibit 1 create a serious health hazard to the occupant(s) and neighboring properties. The Hearings Officer finds that unless the violations of the OARs set forth in Exhibit 1 are corrected in a timely manner, all structures at the Subject Property should be vacated by the City. The Hearings Officer finds fourteen (14) days to be a reasonable time to correct the violations of the OARs listed in Exhibit 1.

The Hearings Officer finds that it is reasonable to assess the amount of \$2,062.32 for inspection services and the cost of taking this case to hearing as a civil penalty. The Hearings Officer declines to order any additional civil penalty given Shore's stated financial situation.

The Hearings Officer finds that in the event the City must vacate the property, the City may seek to recover any and all costs incurred, by following the procedures set out in PCC 22.06.010. The Hearings Officer finds that Exhibit 8a, Amendment to Intergovernmental Agreement, requires the cooperation of the County when cost recovery assessments are ordered for properties lying outside the city limits. The Hearings Officer finds it reasonable and appropriate to retain jurisdiction in this case until December 11, 2012.

#### ORDER AND DETERMINATION:

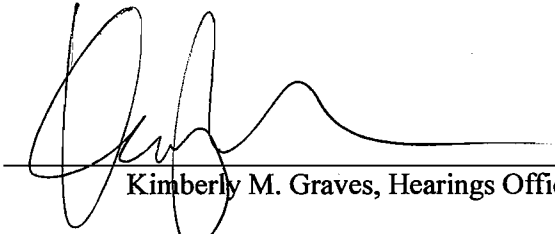
1. Respondent(s) shall correct all violations of the OARs listed on Exhibit 1 and undertake all actions necessary and appropriate to prevent reoccurrence; and

2. In the event all violations of the OARs listed in Exhibit 1 are not corrected by July 6, 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 of the OARs listed on Exhibit 1 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.
3. A civil penalty in the amount of \$2,062.32, as reimbursement of City expenses incurred, is imposed and said penalty shall be payable by July 6, 2012 and if not paid, the Bureau of Development Services (BDS) may seek to make the owing amount a lien against the property. The Hearings Office grants BDS the authority to issue the lien through the appropriate channels established under BDS policy.
4. In the event the City must vacate the property, the City shall have the right to seek one or more Supplemental Orders whereby the Hearings Officer assesses additional civil penalties in amounts sufficient to cover all City costs 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 per PCC 22.06.
5. The Hearings Officer retains jurisdiction over this case until December 11, 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 December 12, 2012.
6. This order has been mailed to the parties on June 8, 2012, and shall become final and effective on June 22, 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: June 8, 2012

KMG:rs

Enclosure



Kimberly M. Graves, Hearings Officer

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Complaint	Dibert, Lisa	Received
1a	City of Portland ITB No. 105048 - Nuisance Abatement		
	Services excerpt	Dibert, Lisa	Received
2	Mailing List	Dibert, Lisa	Received
3	Multnomah Assessor Property Information	Dibert, Lisa	Received
4	GARTH printout	Dibert, Lisa	Received
5	Aerial photo	Dibert, Lisa	Received
6	Ordinance No. 158611	Dibert, Lisa	Received
6a	Intergovernmental Agreement between the City of Portland and Multnomah County - Transition of Building Permit		
	Services	Dibert, Lisa	Received
6b	Exhibit B - Personnel to be Transferred	Dibert, Lisa	Received

6c	Exhibit C - Multnomah County Permit Division Fixed Assets	Dibert, Lisa	Received
6d	Exhibit D - Memorandum of Agreement Between the Oregon Dept. of Environmental Quality and Multnomah County	Dibert, Lisa	Received
6e	Exhibit E - Vehicle List	Dibert, Lisa	Received
7	Memorandum of Agreement Between the ODEQ & the City of Portland	Dibert, Lisa	Received
8	Ordinance No. 162123	Dibert, Lisa	Received
8a	Exhibit A - Amendment to Intergovernmental Agreement	Dibert, Lisa	Received
9	OARS 340-071-0130 - General Standards, Prohibitions and Requirements	Dibert, Lisa	Received
9a	Oregon Plumbing Specialty Code Excerpts	Dibert, Lisa	Received
10	11/4/10 Notice of Potential Violation letter, Erin Mick to Kerrs	Dibert, Lisa	Received
11	2/1/11 Photos	Dibert, Lisa	Received
12	2/1/11 Notice of Violation letter, Mick to Kerrs	Dibert, Lisa	Received
13	5/16/11 letter, Mick to Shore, with attachments	Dibert, Lisa	Received
13a	Diagram	Dibert, Lisa	Received
13b	Notes	Dibert, Lisa	Received
13c	Diagram	Dibert, Lisa	Received
13d	Land Feasibility Study Form	Dibert, Lisa	Received
13e	ODEQ Water Quality Onsite System Installers and Pumpers Database	Dibert, Lisa	Received
13f	Sanitation Application	Dibert, Lisa	Received
14	8/10/11 Second Notice of Violation letter, Mick to Kerrs	Dibert, Lisa	Received
15	8/24/11 Final Request for Voluntary Compliance letter, Michael Grimmert, Multnomah County, to Shore	Dibert, Lisa	Received
16	9/19/11 Notice of Possible Code Hearing	Dibert, Lisa	Received
16a	8/10/11 Second Notice of Violation letter, Mick to Kerrs	Dibert, Lisa	Received
17	On-Site Sewage Disposal/Alt Permit with attachments	Dibert, Lisa	Received
18	12/5/11 Third and Final Notice of Violation letter, Mick to Kerrs	Dibert, Lisa	Received
19	11/2/11 E-mail, Richard J. Wood, Accountant, to Mick	Dibert, Lisa	Received
19a	E-mails between Mick and Shore	Dibert, Lisa	Received
20	12/8/11 Order to Comply letter, Grimmert to Shore	Dibert, Lisa	Received
21	1/3/12 Photos	Dibert, Lisa	Received
22	E-mails between Mick and Kevin Schwarz	Dibert, Lisa	Received
23	Multnomah County Division of Public Health Sewage Disposal Report	Dibert, Lisa	Received
24	Mailing List	Hearings Office	Received
25	Hearing Notice	Hearings Office	Received
26	Notice of Rights and Procedures	Hearings Office	Received
27	Personal Service and Service By Posting	Dibert, Lisa	Received
28	1/17/12 Photos	Dibert, Lisa	Received
29	1/19/12 Notice of Violation Hold, Michael Grimmert to Shore	Dibert, Lisa	Received
30	Packet	Shore, Shawn	Received
31	3/14/12 Letter	Shore, Shawn	Received
32	3/23/12 Memo From Mike Liefeld	Dibert, Lisa	Received
33	3/22/12 Letter to Liefeld from Michael Kucinski	Dibert, Lisa	Received
33a	Memorandum of Agreement Relating to Permitting and Inspection of Onsite Wastewater Treatment Systems	Dibert, Lisa	Received
33b	Email string (5 pages)	Dibert, Lisa	Received
33c	Email from Dibert to Shore	Dibert, Lisa	Received
34	3/30/12 letter from HO Graves to Shore	Hearings Office	Received