



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. FEDERAL NATIONAL MORTGAGE ASSOCIATION, ET AL,
respondents

CASE NO. 2120014

[Bureau Case No. 12-118917-HS]

PROPERTY: 4650 NE 112th Avenue

LEGAL DESCRIPTION:

Parkrose & RPLT, Block 63, N 75' of Lot B; 1N2E22AC-03000,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: May 31, 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:

Respondent ("FNMA") was sent a Notice of Hearing on April 24, 2012 setting the time and place of a hearing (Exhibit 14). On May 7, 2012 FNMA sent a request to reschedule to the Hearings Office (Exhibits 17 and 18). The Hearings Officer granted the request to reschedule and sent a new Notice of Hearing on May 10, 2012 (Exhibit 20). FNMA did not contact the Hearings Office after May 10, 2012. No person attended the May 31, 2012 hearing as a representative of FNMA. Mr. Mitchell R. McKee ("McKee"), Senior Inspector for the City of Portland Bureau of Development Services (the "City") appeared at the May 31, 2012 hearing and testified on behalf of the City. 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 23).

McKee, during the May 31, 2012 hearing, reviewed each of the alleged violations found in Exhibit 1a. McKee stated that he conducted a site inspection at 4650 NE 112th Avenue (the "Subject Property") immediately prior to the May 31, 2012 hearing and observed that violation #2 (gutters and downspouts) had been corrected. McKee stated that violations #1 (lack of electrical service), #3 (walkway damage), #4 (trash and debris), #5 (floor coverings), #6 (bedroom emergency exit blocked), #7 (excessive use of extension cords) and #8 (lack of operable

heating facilities) do currently exist at the Subject Property. The Hearings Officer finds that the testimony of McKee is credible. The Hearings Officer finds no evidence in the record to dispute McKee's testimony. The Hearings Officer finds that violations #1, #3, #4, #5, #6, #7 and #8 do currently exist at the Subject Property.

McKee testified that violation #1 (lack of electrical service) and #6 (bedroom emergency exit blocked) constitute serious safety risks to any occupants and/or visitors to the Subject Property. McKee testified that violation #1 constitutes a potential safety risk (risk of fire at the structure) to neighboring properties.

McKee requested that the Hearings Officer order the following:

- Respondent correct violations #1, #3, #4, #5, #6, #7 and #8; and
- Assess civil penalties in the following amounts:
 - o \$292 for two City inspections at the Subject Property; and
 - o \$1,215 incurred by the City as the cost of the hearing; and
 - o \$2,000 as an additional civil penalty; and
- In the event violation #1 is not corrected within 10 days of the effective date of the Hearings Officer's Order, then authorize the City to vacate the Subject Property; and
- In the event violations #3, #4, #5, #6, #7 and #8 are not corrected within 30 days of the effective date of the Hearings Officer's Order, then assess an additional civil penalty of \$2,000; and
- Vacation of the Subject Property shall include the City's right to remove any and all tenants/occupants at the Subject Property and to thereafter "board-up" the doors, windows and other points of access, so that access to the interior of the Subject Property is restricted; and
- In the event the Subject Property is vacated and later reoccupied and/or the security "board-up" is compromised, during the time that this Order is effective, the City shall have the right to reenter the Subject Property without the necessity of notice to Respondent and without a judicial administrative search warrant and re-vacate and/or security "board-up" the Subject Property; and
- In the event the Subject Property is vacated and lawful tenants are relocated, the City may seek additional civil penalties in amounts adequate to fully compensate the City; and
- If, in the judgment of the City, more than two (2) cubic yards of trash and/or debris accumulate on the Subject Property, the City shall have the right to summarily abate the trash/debris nuisance without the necessity of notice to Respondent and without a judicial administrative search warrant; and
- At the City's request, order additional civil penalties to allow the City to recover costs associated with the vacation, security "board-up" and summary abatement pursuant to the provisions of PCC 22.06; and
- The Hearings Officer retain jurisdiction for 120 days.

The Hearings Officer finds that all of the violations found to exist at the Subject Property constitute either a fire, life and safety risk to occupants and/or nearby residents or they constitute health and sanitation risks to occupants and/or nearby residents. The Hearings Officer finds that if violation #1 (lack of electrical service) is not timely corrected, the Subject Property must be vacated. The Hearings Officer finds that the City's requests, as summarized by the Hearings Officer above, are reasonable and appropriate.

ORDER AND DETERMINATION:

1. Violations #3, #4, #5, #6, #7 and #8 set forth in Exhibit 1 Attachment A must be corrected within thirty (30) days of effective date of this Order and Violation #1 must be corrected within ten (10) days of the effective date of this Order.

2. A civil penalty in the amount of \$3,507.00 is imposed and said civil penalty (\$1,507.00 representing City cost recovery) shall be payable by July 5, 2012, and if not paid shall be made a lien against the Subject Property on July 6, 2012.
3. In the event that violation #1 is not corrected by June 20, 2012, the City is, thereafter, authorized to enter upon the Subject Property to vacate and conduct a security "board-up" of 4650 NE 112th Avenue, Portland, Oregon, (the "Structure"). Vacation shall include the removal of all occupants and residents occupying or otherwise present at the Structure. Security "board-up" includes, but is not limited to, the boarding-up of all windows, doors, and points of access to restrict entry to the interior of the Structure. The Structure shall remain vacant and secured from entry until written permission is granted by the City. In the event that the Structure is unlawfully reoccupied, during the term of this Order, the City is authorized to re-enter, without the need for notice to the Respondent or the need for a judicial warrant, and re-vacate and/or re-security "board-up" the Structure.
4. The Subject Property shall be maintained so that trash and debris does not accumulate. In the event the City determines two (2) or more cubic yards of trash and debris have accumulated, the City shall have the right to summarily abate the trash and debris nuisance without notice to Respondent or without the requirement of a warrant.
5. In event that the requirements of paragraph 1 are not completed in a timely manner, and the City performs any of the task(s) set forth in paragraphs 3 and 4, then the City shall have the right to request the Hearings Officer award one or more civil penalties in amounts sufficient to cover all of the City's costs. The City shall process all requests for additional civil penalties consistent with PCC 22.06.
6. The above Orders apply to Respondent Federal National Mortgage Association and any transferee(s), successor(s) or assign(s).
7. The Hearings Officer retains jurisdiction over this case until 4:30 p.m. on October 5, 2012. Unless a party to this case submits in writing, on or before 4:30 p.m. on October 5, 2012, a request to extend the jurisdiction date, this case shall be closed on October 8, 2012.
8. This order has been mailed to the parties on June 4, 2012, and shall become final and effective on June 18, 2012. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
9. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 4, 2012

GJF:c1

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
<u>1</u>	<u>Complaint</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>1a</u>	<u>Attachment A - List of Violations</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>2</u>	<u>Notification List</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>3</u>	<u>Photo</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>4</u>	<u>PortlandMaps printout</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>5</u>	<u>Multnomah Assessor Property Information</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>6</u>	<u>3/13/12 Photos</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>7</u>	<u>3/22/12 Photos</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>8</u>	<u>TRACS printout</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>9</u>	<u>TRACS printout</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>10</u>	<u>Case history</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>11</u>	<u>3/14/12 Notice of Violation-Property Maintenance Code letter, McKee to Federal National Mortgage Association</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>12</u>	<u>3/27/12 Referral of Housing Case to Code Hearings Officer letter, McKee to Federal National Mortgage Association</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>13</u>	<u>Mailing List</u>	<u>Hearings Office</u>	<u>Received</u>
<u>14</u>	<u>Hearing Notice</u>	<u>Hearings Office</u>	<u>Received</u>
<u>15</u>	<u>Notice of Rights and Procedures</u>	<u>Hearings Office</u>	<u>Received</u>
<u>16</u>	<u>Personal Service and Service By Posting</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>17</u>	<u>5/7/12 letter from Real Property Management</u>	<u>Larson, Jennifer</u>	<u>Received</u>
<u>18</u>	<u>Fax and letter</u>	<u>Real Property Management</u>	<u>Received</u>
<u>19</u>	<u>Updated mailing list</u>	<u>Hearings Office</u>	<u>Received</u>
<u>20</u>	<u>Hearing Notice</u>	<u>Hearings Office</u>	<u>Received</u>
<u>21</u>	<u>5/31/12 Photos</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>22</u>	<u>Case History</u>	<u>McKee, Mitch</u>	<u>Received</u>
<u>23</u>	<u>4/20/12 E-mail from McKee</u>	<u>McKee, Mitch</u>	<u>Received</u>