

Appeal of Raymond Burse, Sr. and Raymond Burse, Jr. against the Hearings Officer's decision to revoke the land use approval for a Type B Accessory Short-Term Rental use LU 18-118937

**OPPOSE
APPEAL**

If you wish to speak to Council, please print your name, address and email

	Name (PRINT)	Address and Zip Code (Optional)	Email (Optional)
✓ 1	Bob Dobrich	1760 NE 17 th 97212	bobdobrich@gmail.com
✓ 2	Jim Barta	2317 NE 12 th 97212	jim.barta@yahoo.com
✓ 3	Dean Giswold	2225 NE 15 th "	
✓ 4	Barbara Nagle	2938 NE 9 th	nagleb2004@yahoo.com
✓ 5	Richard Plagge	2938 NE 9 th	rgplagge43@yahoo.com
✓ 6	Lily Copenagle	1542 N Simpson St	copenagk@yahoo.com
✓ 7	Karen Deora	97212	karendeora@gmail.com
✓ 8	James Stevens <small>on behalf of Carolyn Dasher</small>	2448 SE Yanhill St Portland 97214	jimatpdx@gmail.com
✓ 9	Kate Bloom	2947 NE 10 th 97212	
✓ 10	Nikki Johnston	2125 N.E. 16 th 97212	ndj3@yahoo.com

Appeal of Raymond Burse, Sr. and Raymond Burse, Jr. against the Hearings Officer's decision to revoke the land use approval for a Type B Accessory Short-Term Rental use LU 18-118937

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	Name (PRINT)	Address and Zip Code (Optional)	Email (Optional)
11	HAIKEN MUSITI		HAIKEN@ATFATHO.ORG
✓ 12	JAMES ROSEY	117 NE Snyder	JROSEY@CARCAST.ORG
✓ 13	Gregg Snyder	2926 NE 9th Ave Pdx OR 97217	gsnyder87@yahoo.com
14			
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I'm Barbara Nagle. I live at 2938 NE 9th. My husband, Richard Plagge and I have lived there for 44 years. Through the years we've had warm, positive relationships on our street. We've always been committed to Portland's strong, diverse, inclusive neighborhoods.

We appreciate the Burses' concerns about racism. We too are concerned about racism in our community. It means a great deal to us and so I state clearly and sincerely: to attribute our complaints to racism is an abuse of the word. Our complaints have nothing to do with race.

We're both retired and although we both have volunteer obligations, we're home a lot. We do all of our own maintenance so we're outside a lot.

We're especially aware of what happens next door at 2946. The driveway passes 5 feet away under our bedroom window and the back deck is 5 feet from our garden. We see and hear almost every person and car that enters the driveway. There is no barrier between our house and that driveway.

Sometimes the guests are considerate and then there are those who party until the morning hours, run enthusiastic team building retreats, use foul language, urinate on the fence separating our back yards, or barbecue on the deck after midnight. We are awakened at all hours as guests come and go, greet each other in the excitement of their vacation, and drag their suitcases down the driveway to the back door. We hear all of it from our bedroom above, especially in the summer months.

We understand it – they're on vacation, eager to have a good time in the "motel" they've rented.

This whole house STR started in January 2017 under the prior owner without a permit. We complained to her and then to the city in 2017 BEFORE Mr. Burse was the owner. We complained to Airbnb. Our concerns were not addressed.

The city only accepts complaints with documenting time-stamped photos. On the day of the hearing in July 2018, Mr. Burse, Jr., called

the police claiming my husband was harassing his guests. Richard's "crime" was that he had taken photos of guests' trucks blocking the street. Mr. Burse, Jr., then emailed our neighbors saying they shouldn't communicate with us because we were under police investigation. As noted by BDS at July hearing, this was not true.

The complaints with photos are our only tool. We've submitted 19 Citizen Complaint Logs with 167 photos. The evidence shows the flagrant, serial, proven, dishonest management of this enterprise, in spite of multiple opportunities to comply.

We are deeply affected by the unsupervised activities there. I don't know how to convey the impact this business has on our lives and our neighborhood. We can't capture all of it on Complaint Logs.

We're no longer comfortable entertaining in our garden; we don't allow our grand-niece or my 95-year-old mother in the garden alone. We dread the better weather because it brings out the worst in the unsupervised guests.

Mr. Burse claims he's corrected the problems, but he hasn't.

The house is advertised as a whole house rental and it is rented almost every day. On July 28th the owners listed it for 12 guests, defying the permit's 6 person limit. Here is a screen shot

City Code explicitly prohibits full time short-term rentals and requires that someone live there at least 270 days of the year. Mr. Burse, Jr., claims he lives there (BDS exhibits 25 C and D), but he doesn't and never has.

On July 22nd, Mr. Burse, Jr. informed the Washington County Courts that he lives in South Carolina and that when he exercises his parental rights in Oregon, he stays with his girlfriend on Murray Road in Beaverton. Here is the court record.

His Linked In page says his "Real Estate Holding Company" has short-term rental properties in six states. It's a business, not a home.

Our only respite in the past two years was February to July of 2018 when the Freemans, an African American family displaced by a fire, rented it. They were considerate, responsible neighbors. But Mr. Burse raised their rent from \$4,000 to \$6,000 a month saying he could make a lot more money on Airbnb. The Freemans left and we were sad to see them go.

We recognize the merits of alternative housing and there are many models on our street. But there must be limits that respect livability for all. We all have a right to enjoy our homes.

We accepted the conditional use permit because it set reasonable limits. But with no on-site resident, unsupervised guests continue to violate the permit.

We support the city's efforts to prevent unsupervised motels like this. This is not a home. It's an investment company's low overhead motel in a residential neighborhood – everything the city claims it wants to avoid. It displaces long-term residents and exacerbates our housing crisis.

This isn't about us or the investors who own 2946. It's about the livability of our city. For over two years we've tried to find relief to once again fully enjoy our home. Condition #16 of the August 2018 decision says, "any but the most minor violations should be grounds for revocation." We need relief now. We plead for immediate revocation.



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Raymond Burse, Jr. · 3rd

Global Product Marketing Manager at Apex Tool Group, A Bain Capital Company

Portland, Oregon · 500+ connections · [Contact info](#)



Apex Tool Group, A Bain Capital Company



Indiana University - Kelley School of Business

Highlights



Reach out to Raymond for...

Joining a nonprofit board.

[Message Raymond](#)

Experience



Global Product Marketing Manager

Apex Tool Group, A Bain Capital Company

Oct 2018 – Present · 11 mos

Columbia, South Carolina Area

Global Product Marketing Manager for the APEX Assembly Product Line



Founder

RMB Holdings

Jan 2018 – Present · 1 yr 8 mos

United States

Real Estate Holding Company specializing in the short-term rental market in Kentucky, Ohio, South Carolina, North Carolina, Oregon, and Washington.

professionals.



Income \$102,306+ a year?

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People Also Viewed



Evan Morris · 3rd

Director of Community Events at The V Foundation



JJ Manning · 3rd

Program Manager at Duke Corporate Education



Jorge Acuna · 3rd

Director of Broadcasting and Hispanic Outreach



Matt Whiteside · 3rd

Director - Merchandising and Strategic Projects at North Carolina Football Club



Katy Campbell · 3rd

Marketing Strategist at VisionPoint Marketing



Christina Brown

Teaching Assistant at OCM BOCES Special Education



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Verified Correct Copy of Original 7/22/2019

FILED
OREGON JUDICIAL DEPT
WASHINGTON COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

Form SLR 8.015

Kristen Robertson
Petitioner

Case No. 16DR05129 JLF

MOTION AND DECLARATION
FOR RESET

and
Raymond Buse
Respondent

Motion

I am the ☐ Petitioner ☒ Respondent ☐ Other _____ in this case. I ask
the court to issue an Order to Reset the following scheduled court date:

- ☒ Hearing re: Petitioner's Motion for Order to Show Cause
- ☐ Settlement Conference
- ☐ Status Conference
- ☐ Trial
- ☐ Other _____

Date and Time of court date: 7/24/19 9AM

Number of prior resets of this matter: 0

The pending court date was requested by:

- ☐ Party requesting reset
- ☒ Other party

Parenting time is at issue? ☐ yes ☒ no

Declaration

I am requesting a reset because: I have not been properly served. I live
in South Carolina & need time to prepare. See Appendix for
detailed Account.

☒ If I need more time to prepare, I am asking for this amount of time: 4 weeks

☒ I am not available for court on the following future dates: July 22 - Aug 28 & 29

☐ The other party is not available for court on the following future dates: _____

16DR05129
MOCO
Motion - Continuance
11398234



☐ I/We request the following date(s) if available: _____

☒ I have contacted the other party or the other party's attorney, if represented, by ☐ telephone
☒ e-mail ☐ text ☐ in person ☐ other _____ or ☐ I have
not contacted the other party because: _____

_____. The other party ☐ agrees ☐ objects to my reset request.

Certificate of Document Preparation. Check all that apply:

☐ I selected this document for myself, and I completed it without paid assistance.

☐ I paid or will pay money to _____ for assistance in
preparing this form/document.

I hereby declare that the above statements are true and complete to the best of my knowledge
and belief. I understand they are made for use in court, and I am subject to penalty for perjury.

☐ Petitioner ☒ Respondent, Signature

Print Name

1615 NW MURRAY RD PORTLAND OR 97220 502-744-8792
Address or Contact Address City, State, Zip Telephone or Contact Telephone

Appendix A

Request for Change of Hearing Date

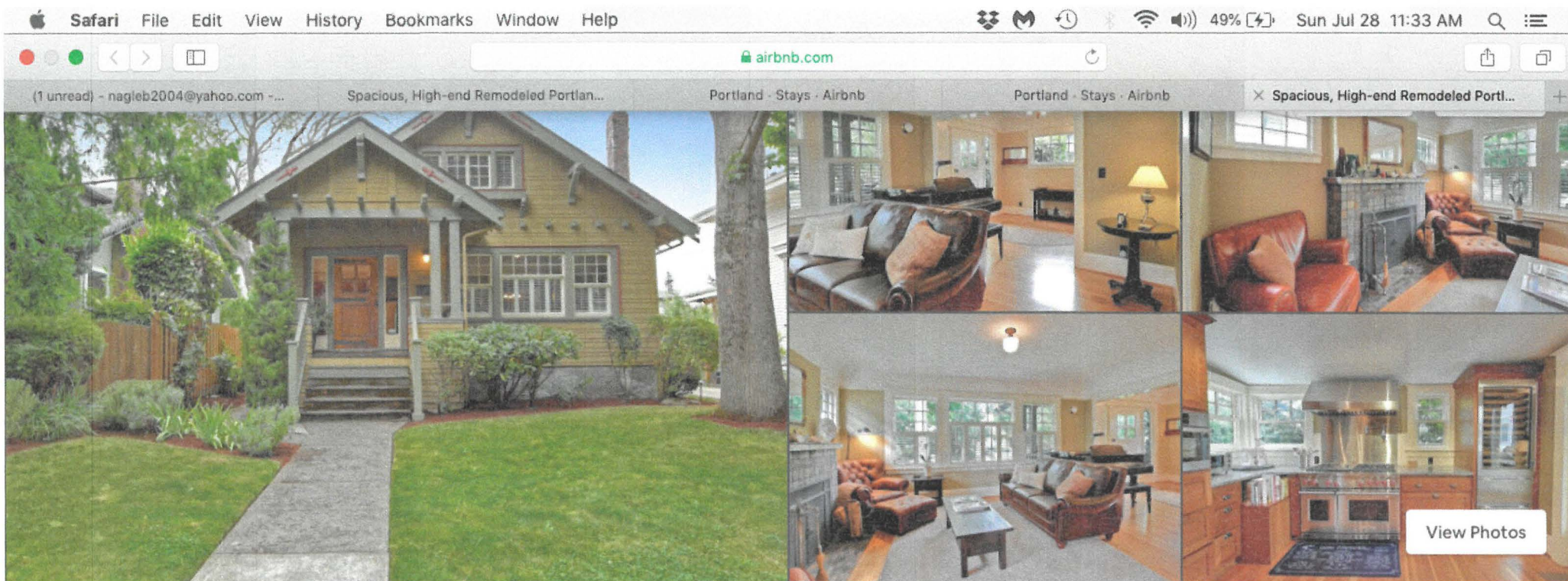
Case No. 16DR05129

Re: Order to Show Cause Re: Order to Enforce Parenting Time

I, Raymond Burse (Respondent / Father), request the hearing date in the above matter be reset to August 29th or August 30th due to improper service of the Order to Enforce Parenting Time, as detailed below:

The Motion in the present case was executed by Judge Fun on June 11, 2019; however, documents were not attempted to be served on the Respondent until July 3, 2019. No attempt was made by Kristin Robertson (Petitioner / Mother) or Petitioner's representative to coordinate service in advance of this date, either by electronic communication or phone. Further, on the date of attempted service, the documents were hand delivered to the Respondent in an envelope addressed to the incorrect person (Respondent's father) and listed the incorrect address for the Respondent (Respondent's father's address), see attached Exhibit. In addition to the delay in service and misidentification of the Respondent, the documents were inappropriately served during a custody exchange in front of the shared minor child (Kaiden, 3), while he was in Respondent's arms. Again, no earlier communication was made by Petitioner or Petitioner's representative to coordinate service or show good faith in providing an earlier courtesy copy of the filing to avoid the above-described delays and avoidable service exchange in front of Kaiden.

In light of the above, Respondent requests the hearing be reset in order to appropriately allow time to prepare a substantive response to the Motion as well as arrange travel. As well noted in the Order, the Respondent lives out of state, in South Carolina, and travels to Oregon for parenting time every other weekend. The scheduled hearing date is not only nonadjacent to Respondent's scheduled parenting time weekend, but it is also only three weeks from service, limiting Respondent's time for appropriate preparation and travel arrangements.



Spacious, High-end Remodeled Portland Craftsman

Portland

🏠 Entire house

12 guests 4 bedrooms 5 beds 3 baths

🔑 Self check-in

Check yourself in with the lockbox.

👤 R is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.



R

\$409 per night

★★★★★ 18

Dates

09/24/2019 → 09/26/2019

Guests

6 guests



\$409 x 2 nights ⓘ

\$818

Testimony of Robert Dobrich, Irvington, Portland, OR, 97212, August 28, 2019
In Support of Revocation of ASTR B Permit at 2946 NE 9th Ave, Portland

I am Robert Dobrich, current President of the Irvington Community Association (ICA). The ICA represents all residents of Irvington—homeowners and renters along with businesses. All meetings of the ICA and its committees are open to the public, and all requests to speak are granted.

In Irvington there are over one hundred permitted short term rentals. The majority of these operate within the city guidelines and permit requirements. Unfortunately the whole house vacation rental at 2946 NE 9th is not one of them. As the record shows, there has been a blatant disregard for the rules. In fact the owners of 2946 NE 9th have been violating the rules for two years. After the first hearing in August 2018, the current owner, Mr. Burse, was granted a type B permit with conditions. These conditions were not unreasonable and followed the city protocol and standards. However, these conditions were not followed with many egregious violations. Neighbors, not just those next door, continued to complain and document these violations. Since the City is complaint based it put the onus of enforcement on the shoulders of the neighbors. The reported violations were captured in official complaint logs filed with BDS. These violations lead to a revocation hearing in May 2019. At that hearing HO Frank found there were several substantial violations to the conditions of the permit and revoked the permit.

In addition, Mr. Burse has repeatedly used intimidation tactics against his neighbors, including threats of police arrest, legal action and verbal harassment. The ICA has fielded complaints from several neighbors regarding this whole house vacation rental. Contrary to Mr. Burse's assertion, not all of these neighbors were ~~board~~ board members of the ICA.

Mr. Burse has continued to say that race played a factor in these actions. I wouldn't disagree that race has played a part in Mr. Burse's life. However, I will emphatically testify that race had nothing to do with any complaint or action by the ICA. But let's bring it back to the facts. Mr. Burse purchased a property that already had violations of the short term rental code. He chose to continue to operate the whole house vacation rental. He chose to not follow the conditions of the permit set forth by HO Turner in August 2018. He chose to simply ignore the rules set forth for its operation repeatedly and to this day. The result has been an impingement on the livability of the long term residents on both sides of the block and behind the subject property.

In summary, the whole house vacation rental at 2946 NE 9th continues to operate with numerous violations of the permit conditions and has generated countless complaints logged by several neighbors. It appears the operators are blatantly disregarding the permit requirements. As such, based on all of the information in the record, I support the revocation of the permit.

Testimony of Dean Gisvold, Irvington, Portland, Or 97212, August 28, 2019 **In Support of Revocation of ASTR B Permit at 2946 NE 9th Avenue.**

Hearings Officer Gregory Frank (HO Frank) concluded that the B permit in favor of Raymond Burse, Jr and Raymond Burse, Sr (collectively Burse) should be revoked after a thorough review of the record. **I agree.**

I want to respond to the arguments made by Burse in their appeal notice. There are several, and none warrant a change in the HO Frank opinion and decision.

First, Burse argues that HO Frank acted beyond the noticed violations. Burse admits they received the notices of violations, dated November 30, 2018, and December 7, 2018, which resulted in a meeting with BDS. Burse also received the Staff Report prior to the May 15, 2019 hearing date, which listed 99 violations, covering six of the 16 conditions required by the decision of Hearings Officer Turner (HO Turner) to grant the B Permit for three rooms and up to 6 guests.

I have attached the BDS Evidence of Violations of Conditions as Addendum A plus the specific findings by HO Frank.

City Code 33.700.030 A says, "**It is unlawful to violate** any provisions of this Title, a land use decision, or **conditions of a land use approval.**" (Emphasis added.)

City Code 33.700.030 B says, "BDS must give written notice of any violation of this Title, land use decision, or conditions of land use approval to the operator. Failure of the operator to receive the notice of the violation does **not** invalidate any enforcement actions taken by the City." (Emphasis added.)

And the staff report correctly noted on page 4, "**Note that there is nothing in Zoning Code Section 33.700.040 or the Type III notice provisions that limits the Hearings Officer's consideration to only those conditions cited in the initial notice.**" (Emphasis added.)

Second, Burse argues that HO Frank did not pay attention to his "corrective actions" but then notes that HO Frank's conclusion was that such actions were "some, albeit late and not enough, to address the condition violations." The other answer is that the violations continued, week after week after week. The needed correction action was to stop committing the violations, and install a manager to supervise the whole house vacation rental at 2946 NE 9th. That did not happen.

Third, Burse argues that all these violations came from one neighbor as if that justifies continued violations. Portland has a complaint driven enforcement policy; it requires neighbors to complain to BDS and for BDS to fix the problem. That is what is happening in this matter. The Code requires substantial evidence. The neighbor was required by City policy to fill out a periodic complaint log with pictures and submit it to BDS. Although the neighbors did exactly what the City requires, Burse would have you minimize this activity. Further, Burse knew that BDS does not have weekend or evening supervision or enforcement - that is why he felt he could change his AirB&B advertisements on the weekend to show a whole house rental for 12 persons, and then on Monday switch it back to 6 persons.

Fourth, Burse argues that the neighbors and the neighborhood association should have contacted him to work out the violations. His notice of contact info (at least the copy I received) ended with "All calls will be recorded and transcribed, and any attempts to harass or intimidate will be properly reported to the correct legal authorities." This was not a "please call me with any concerns" kind of notice. **Neither the neighbors nor the NA had any obligation to work out his violations, while Burse had a code prescribed prohibition against causing such violations in the first place.**

Fifth, Burse argues the conditions laid down by HO Turner were "unusual and different." If Burse objected to the conditions they could have appealed HO Turner's permit decision. They did not. The conditions were designed by HO Turner to deal with the specific problems of this property as detailed in the B permit approval and order. Some of them may seem unusual for the typical situation, but the situation at 2946 NE 9th Ave was far from typical. As HO Turner noted, "Conditions are needed to minimize adverse impacts on nearby properties." **Thus, violations should be judged on the existing conditions in the Conditional Use approval and order, not conditions that owners would prefer.** These conditions are based on the findings of HO Turner: "Previously an ASTR was operating at the site without the benefit of a Conditional Use review, ASTR permit, or an on-site resident, and was the source of multiple complaints regarding adverse impacts from noise, late-night activity, and traffic." Finally, HO Frank said that Burse cannot collaterally attack the conditions in this enforcement action.

"III. CONCLUSIONS

"The Hearings Officer found that LU 18-118937 CU is a final decision. **The Hearings Officer found that the Operator of the Subject Property ASTR is legally obligated to follow conditions of approval set forth in LU 18-118937 CU.** (Emphasis added.)

"The Hearings Officer, based upon a review of all of the evidence in the record, found substantial violations of conditions of approval (B.1, B.2, B.3, B.5, B.7, B.8, B.9, B.10, B.13, and B.14) had occurred during times relevant to this case. The Hearings Officer also found that the Operator's violation of conditions of approval (B.1, B.2, B.3, B.5, B.7, B.8, B.9, B.10, B.13, and B.14) constituted a failure to implement conditions such that the original approval criteria would not be met. (Emphasis added.)

"The Hearings Officer found the code requirements of PCC 33.700.040.E.1.c. were satisfied and revocation of land use approval LU 18-118937 CU is factually and legally warranted.

"IV. DECISION

"Revocation of the Land Use Approval LU 18-118937 CU for a Type B ASTR at 2946 NE 9th Avenue." (Emphasis added.)

Please deny the appeal and uphold the revocation. Please support neighbors who have done precisely what the City requires.

ADDENDUM A

From Staff Report, May 15, 2019:

BDS Evidence of Violations of Conditions BDS obtained the following substantial evidence that shows the violations of Conditions B.1, B.2, B.3, B.5, B.7 and B.8:

B) For the duration of operation of the Type B ASTR facility, the ASTR operator will meet the following conditions:

1. *Provide rental arrangements limited to single groups only, with a maximum of two guests per legal bedroom at any one time, regardless of age. If the maximum number of three bedrooms are rented, ASTR group size is limited to six people. The resident's bedroom in the basement of the site shall not be rented to guests at any time.*

Condition B1 List of Violations			
Date	Description of the Violation	Evidence	Exhibit
8/24/18	Renting to 10 guests, more than 3 guests per room, more than 4 rooms	Operator's Guest Log	I-25.b
8/30/18	Renting to 8 guests and 4 rooms	Operator's Guest Log	I-25.b
9/05/18	Renting 4 rooms	Operator's Guest Log	I-25.b
9/20/18	Renting to 11 guests, 4 rooms and 3 guests per room	Operator's Guest Log	I-25.b
10/4/19	The Airbnb ad has a review from Steven in September which mentions place accommodated 10 people. This matches the Operator's Guest Log for Steven Solls who rented the house for a group of 11 on 9/20/18.	BDS Document	I-7
10/05/18	Renting to 8 guests and 4 rooms	Operator's Guest Log	I-25.b
10/19/18	Renting 4 rooms	Operator's Guest Log	I-25.b
11/09/18	Renting 4 bedrooms	Operator's Guest Log	I-25.b
12/21/18	Renting 4 bedrooms	Operator's Guest Log	I-25.b
12/24/18	Renting 4 bedrooms	Operator's Guest Log	I-25.b
12/29/18	Renting 4 bedrooms	Operator's Guest Log	I-25.b
01/19/19	Use of 4 bedrooms	Operator's Guest Log	I-25.b
3/2019	The Airbnb review by Breanne mentions the use of the	BDS Document	I-35

Condition B1 List of Violations			
Date	Description of the Violation	Evidence	Exhibit
	Bonus space in the basement. This is the location of the 4 th bedroom		

[continued next page]

B.2. All persons on the site shall comply with quiet hours between 9 p.m. and 8 a.m. Sundays through Thursdays and between 10 p.m. and 8 a.m. Fridays and Saturdays. Use of all outdoor spaces, including the main level rear porch and second story rear porch, and yards are prohibited by anyone between the hours of 7 p.m. and 8 a.m. all days. Use of the driveway and front walkway shall be limited to parking of passenger vehicles and for travel to and from the house during these hours. Gathering or waiting in the driveway is prohibited between 7 p.m. and 8 a.m. all days.

Condition B2 List of Violations:			
Date	Description of the Violation	Evidence	Exhibit
8/23/18 Thursday	Use the outdoor spaces between 7pm and 8am There is a loud party on the two back decks, photo taken at 11pm of the guests smoking on the side patio	Citizen Complaint Log	I-9
8/25/18 Saturday	Use of the outdoor spaces between 7pm and 8am "Loud party on back deck Photo 3 Guests arrive after 10 PM. Nolsy drop off of 2 guys at 2:30 AM wakes us. Another group dropped off at 3:30 AM. At 4:30 AM 3 guys on back deck smoking and drinking."	Citizen Complaint Log	I-9
9/7/18	Gathering in the driveway for a commercial bike ride by a California bike manufacturing group Ellet at 6:59am - Use of the Driveway between 7pm and 8am.	Citizen Complaint Log	I-9
9/8/18	Use of outdoor spaces between 7pm and 8am Large group of partiers on the side porch at 7:50pm	Citizen Complaint Log	I-9
9/21/18 Friday	Use of the outdoor spaces between 7pm and 8am loud voices wake the neighbors. Two men yelling on the back deck at 1:38am photo 7	Citizen Complaint Log	I-9 and I-11
9/22/18	Use of the outdoor areas between 7pm and 8am Guests return to house at 1:37am and are on the side deck waking the neighbors.	Citizen Complaint Log	I-9
9/22/18 to 9/23/19	Use of the outdoor spaces between 7pm and 8am All day party and BBQ starting at 10am and extending into the night and to the next morning of the 23rd - Photo at 10pm of the party on the side deck. Another photo at 12:34am of the party on the side deck.	Citizen Complaint Log	I-9
10/20/18	Use of the outdoor spaces between 7pm and 8am party on back deck at 9pm	Citizen Complaint Log	I-9
1/17/19 to 1/18/19	Use of the outdoor space between 7pm and 8am Party on the back deck. There are photos of guests smoking on the side deck at 9:13pm and 9:42pm. At 12:03am neighbors are awakened by partiers from the	Citizen Complaint Log	I-20

[continued next page]

Condition B2 List of Violations			
Date	Description of the Violation	Evidence	Exhibit
	house exiting the side door and going into the street		
1/18/19 to 1/19/19	Use of the outdoor spaces between 7pm and 8am. There are smokers on the back deck in a photo at 10:39pm. At 12:30am, the neighbors are awoken by a party on the back deck with an obscene conversation and guests smoking shown in the photo	Citizen Complaint Log	I-20
1/21/19	Use the outdoor spaces between 7pm and 8am 1:47 am Loud noises from guests dropped off at the house and accessing the side porch	Citizen Complaint Log	I-20
1/22/19	Use of the outside areas between 7pm and 8am Guests are out on the side patio at 9:58pm	Citizen Complaint Log	I-28
1/28/19	Use of outdoor spaces between 7 pm and 8am Guest smoking on the side patio at 6:59am	Citizen Complaint Log	I-28
1/29/19	Use of the outdoor spaces between 7pm and 8am 7:29pm guests partying on the back deck	Citizen Complaint Log	I-28
2/15/19	Use of the outdoor spaces between 7pm and 8am Photos of guests on the side patio at 8:51pm and 9:33pm	Citizen Complaint Log	I-29
3/7/19	Use of exterior areas between 7pm and 8am Guests using the outside are at 8:16pm.	Citizen Complaint Log	I-30
3/11/19	Use of outdoor spaces between 7pm and 8am 940pm Guests on the side patio	Citizen Complaint Log	I-26
3/14/19	Use of outdoor spaces between 7pm and 8am Guests on the side patio at 920pm	Citizen Complaint Log	I-26
3/17/19	Use of the outdoor spaces between 7pm and 8am Guests on the side deck at 11:12pm	Citizen Complaint Log	I-26
3/27/19	Gathering in the driveway between the hours of 7pm and 8am photo shows guests hangout and smoking on the driveway at 8:19pm.	Citizen Complaint Log	I-31
3/29/19	Use of outdoor spaces between 7pm and 8am Guests using the back deck to smoke at 10:16pm	Citizen Complaint Log	I-31
4/7/19	Use of the outdoor spaces between 7pm and 8am Loud noises and conversations from guests parking cars in the driveway and unloading packages from the vehicles into house through the back deck using the outdoor spaces. There are photos from 12:03 am, 1:07am, and 1:10am	Citizen Complaint Log	I-32

[continued next page]

3. No more than two tandem parking spaces are available on the driveway. Parking is not allowed within 10 feet of the front property line.

Condition B3 List of Violations			
Date	Description	Evidence Document	Exhibit
10/1/18	3 cars in the driveway, parking within 10 feet of the front property line	Citizen Complaint Log	I-21
11/22/18	3 cars in the driveway, parking within 10 feet of the front property line	Citizen Complaint Log	I-21
11/23/18	3 cars in the driveway, parking within 10 feet of the front property line	Citizen Complaint Log	I-21
11/24/18	3 cars in the driveway, parking within 10 feet of the front property line	Citizen Complaint Log	I-21
1/18/19 Saturday	Parking a vehicle within 10 feet of the front property line	Citizen Complaint Log	I-20
1/26/19	3 cars in the driveway, car parking within the 10 ft of the front property line	Citizen Complaint Log	I-27
4/7/19	3 cars in the driveway	Citizen Complaint Log	I-32

5. Smoking and inhalant delivery systems (vaping, etc.) is prohibited anywhere on the property, including indoor and outdoor spaces.

Condition B5 List of Violations			
Date	Description	Evidence Document	Exhibit
8/20/18	Guests smoking on the site – back deck	Citizen Complaint Log	I-9
8/23/18	Guests smoking on the site – Back deck	Citizen Complaint Log	I-9
8/25/18	Guests smoking on the site – Back deck	Citizen Complaint Log	I-9
9/29/18	Group of smokers in the driveway	Citizen Complaint Log	I-9
1/17/19	Guests smoking on the site	Citizen Complaint Log	I-20
1/18/19	Guests smoking on the back deck	Citizen Complaint Log	I-20
1/19/19	Guests smoking on site	Citizen Complaint Log	I-20
1/28/19	Guests smoking on the property	Citizen Complaint Log	I-28
2/25/19	Guests smoking on the site	Citizen Complaint Log	I-29
3/17/19	Guests smoking at the site	Citizen Complaint Log	I-26
3/17/19	Guests accessing house from the side entrance at the driveway	Citizen Complaint Log	I-26
3/27/19	Guests smoking on the driveway of the property	Citizen Complaint Log	I-31
3/28/19	Guests smoking on the back deck of the property	Citizen Complaint Log	I-31
3/29/19	Guests smoking on the back deck of the property	Citizen Complaint Log	I-31

[continued next page]

7. *Guests shall be required to access the residence via the front door. No guest access is permitted between the driveway and the rear yard.*

Condition B7 List of Violations			
Date	Description	Evidence Document	Exhibit
8/23/18	Guests using the side entrance to enter the house	Citizen Complaint Log	I-9
8/25/18	Use of the side entrance to access the site	Citizen Complaint Log	I-9
1/9/19	Guests access the residence through the side door keypad entrance at the rear patio at 9:21 pm	Citizen Complaint Log	I-21 and I-22
1/12/19	Guests access the residence through the side door keypad entrance at the rear patio at 12:38pm	Citizen Complaint Log	I-21 and I-22
1/14/19	Guests access the residence through the side door keypad entrance at the rear patio at 9:31am	Citizen Complaint Log	I-21 and I-22
1/17/19	Guests access the residence through the side door keypad entrance at the rear patio at 7:15pm	Citizen Complaint Log	I-20
1/21/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-20
1/22/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-28
1/26/19	Guests accessing the house from the side entrance at the driveway	Citizen Complaint Log	I-28
1/30/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-28
1/31/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-28
2/15/19	Guests access the residence through the side door keypad entrance at the rear patio at 8:51 and 9:33pm – guests bring the suitcases down the driveway to access the side entry.	Citizen Complaint Log	I-29
2/16/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-29
2/16/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-29
2/17/19	Guests use the side entry for all access to and from the house during the stay	Citizen Complaint Log	I-29
2/18/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-29
2/20/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-29
2/23/19	Guests access the residence through the side door keypad entrance at the rear patio – Guests are confused in the driveway about access to the house. They discuss in the driveway that they must use the side entrance to access the house.	Citizen Complaint Log	I-29
2/25/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-30

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Condition B7 List of Violations			
Date	Description	Evidence Document	Exhibit
2/26/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-30
3/7/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-30
3/11/19	Guests access the residence through the side door keypad entrance at the rear patio.	Citizen Complaint Log	I-26
3/12/19	New Guests arrive at the house and attempt to enter through the front door. Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-26
3/14/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-26
3/18/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-26
3/20/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-30
3/22/19	Guests leave the site through the side door keypad entrance at the rear patio at 6:38am	Citizen Complaint Log	I-30
3/23/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-30
3/27/19	Guests access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-31
4/5/19	Guests arrive and attempt to enter the residence at the front door which does not work. Guests then access the residence through the side door keypad entrance at the rear patio	Citizen Complaint Log	I-32
4/6/19	Guests accessing the residence through the side door	Citizen Complaint Log	I-31
4/7/19	Guests accessing the house through the side entrance	Citizen Complaint Log	I-31

[continued next page]

8. The ASTR operator must amend the House Rules and Narrative included in Exhibit A-3 to comply with this decision and Conditions B1 through B7 of this approval. The amended House Rules and Narrative must be included in all advertisements for the ASTR facility.

List of Violations of Condition B8			
Date	Description	Evidence Document	Exhibit
10/4/18	The Airbnb advertisement does not contain language which reflects the conditions of the CU. Five beds are advertised but bedroom photos have one bed; 3-level house is advertised. Guest review states that 10 people were accommodated very comfortably.	BDS Document	I-7
10/5/18	The Airbnb advertisement does not contain language which reflects the conditions of the CU. Under the description of the house, it states 3 bedrooms and	BDS Document	I-8

	bonus room. It also states there is private parking for 3 cars in 2 different sections of the ad. Under the policies section, it states there is an 8-guest minimum on all holidays and weekends for summer and fall months. It also states the house is non-smoking house, Ashtrays are provided for convenience, please dispose of all butts appropriately.		
10/29/18	Airbnb ad remains in violation – no conditions added to the narrative and house rules	BDS Document	I-10
11/29/18	Airbnb ad remains in violation – no conditions added to the narrative and house rules	BDS Document	I-12
1/8/19	Airbnb ad remains in violation – no conditions added to the narrative and house rules	BDS Document	I-16
1/23/19	Airbnb ad remains in violation – no conditions added to the narrative and house rules	BDS Document	I-23
3/21/19	Airbnb ad was modified – states a 6-guest minimum. language was added that addresses conditions B1, B2, B3, and B4 from the Conditional Use, but it also has conflicting language. It states 3 bedrooms available, but later in the description states that there is a bonus room which hints at 4 rooms versus the 3 allowed though B1. While the house rules sections describe that only 2 tandem car parking spots are allowed, the neighborhood description states that there is a private driveway to park 3 cars.	BDS Document	I-27
4/17/19	Same as above.	BDS Document	I-34

From Decision of the Hearings Officer Gregory Frank, dated June 21, 2019

"Condition B.1:

Condition B.1 relates to the maximum number of guests per night and the maximum number of rooms that may be occupied per night.

....

The Hearings Officer finds that one violation of a guest/room limit condition is significant. The Hearings Officer finds that 13 or 14 guest/room limit violations greatly exceeds the PCC 33.700.040.E.1.c "substantial violation of conditions" standard.

"Condition B.2:

Condition B.2 requires the Operator of the Subject Property ASTR to adhere to stated quiet hours on decks, porches and other outside areas.

....

The Hearings Officer finds that virtually all of the alleged violations of condition B.2 that were listed in Exhibit J.6 involved ASTR guests. The Hearings Officer finds the "party" related violations of condition B.2, quoted above, did occur. The Hearings Officer finds that the majority of the alleged violations of condition B.2 meet the PCC 33.700.040.E.1.c "substantial violations" standard.

"Condition B.3:

Condition B.3 relates to driveway parking.

....

The Hearings Officer finds repeated violations of condition B.3 significantly impact neighboring properties by increasing noise, glare from lights, and privacy. The Hearings Officer finds the cumulative impacts of repeated violations of condition B.3 are adequate to meet the "substantial violations" test under PCC 33.700.040.E.1.c.

"Condition B.5:

Condition B.5 prohibits smoking "on the Property, including indoor and outdoor spaces."

....

The Hearings Officer finds that of those 15 violations, it is reasonable to estimate five of the alleged violations involved Burse, Jr., his family, and/or friends and the balance of 10 represent violations by Subject Property ASTR guests or invitees of the guests. The Hearings Officer finds that 10 violations of condition B.5 does reach the PCC 33.700.040.E.1.c threshold and therefore are considered "substantial violations."

"Condition B.7:

Condition B.7 requires Subject Property ASTR guests to access the residence via the front door. Condition B.7 expressly prohibits guest entry from any door "between the driveway and the rear yard."

....

The Hearings Officer finds the large number of violations of condition B.7 meets the Burse, Sr. definition of "substantial" (Exhibit H.41) ("considerable in quantity"). The Hearings Officer finds the Operator's violations of condition B.7 meet the PCC 33.700.040.E.1.c threshold of being "substantial violations of conditions."

"Condition B.8:

Condition B.8 requires the Operator to have House Rules that include conditions set forth in the decision.

....

The Hearings Officer finds that published House Rules are critical to communicate the required behavioral expectations to potential and actual Subject Property ASTR guests. Failing to publish House Rules allows guests occupying the Subject Property ASTR to establish their own rules of behavior. Allowing guests to establish their own rules of behavior at the Subject Property ASTR is likely to lead to behavior that conflicts with the conditions of approval found in LU 18-118937 CU. The Hearings Officer finds that guest behavior not conforming to the conditions of approval can be anticipated to cause negative impacts upon the neighborhood. The Hearings Officer finds that Operator's failure to timely draft, create, publish, and disseminate House Rules that are consistent with the approval conditions in LU 18-118937 CU constitutes a "substantial" violation under PCC 33.700.040.E.1.c.

"Condition B.9:

The Hearings Officer finds the Operator's failure to timely draft, create, publish, provide guests, and display at least one copy of the House Rules at the Subject Property ASTR is a "substantial" violation under PCC 33.700.040.E.1.c.

"Condition B.10:

Condition B.10 requires the Operator to include (display) in all advertisements that the Subject Property ASTR has an occupancy limit of six people and that no more than three bedrooms may be occupied during an ASTR overnight stay.

....

The Hearings Officer finds that every advertisement of the Subject Property ASTR that did not include the condition B.10 occupancy/room limitation is a "substantial violation" under PCC 33.700.040.E.1.c.

"Condition B.13:

Condition B.13 requires the Operator to notify the ICA and identified neighboring properties of certain information.

....

The Hearings Officer finds that a violation of condition B.13 is a significant and important. Without current contact information, the neighborhood association and/or neighbors have no accessible person/entity to raise concerns about an ASTR. The Hearings Officer finds violation of condition B.13 is a "substantial violation" under PCC 33.700.040.E.1.c."

July 31, 2019

AUDITOR 08/28/19 AM 8:54
ai
for

City Council Clerk
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Written Testimony regarding Case #LU 18-118937 CU
Hearing date: Aug. 28, 2019, 2:30 pm
Submitted by Carolyn Dasher, 2937 NE 10th Ave., Portland, OR 97212

I wish I could be present in person to testify regarding this case, but I will be traveling on the hearing date. The following sums up what I would say if I could be there.

In their Narrative in Support of Appeal, the operators imply that the complaints of a single neighbor are behind the revocation of their permit. This is untrue. The Northwest corner of my property touches the Southeast corner of the operators' property. Their deck overlooks my patio and is probably about 25 feet (if that) from my actual house, so we definitely are impacted by what goes on at this property. At the recommendation of BDS, we have submitted a number of complaint logs regarding noise, partying, and after-permitted-hours deck usage. (Please note that these complaint logs request and provide for the inclusion of photographs.)

While we may not have been as strongly impacted as the neighbors immediately next door to the property, we are just as tired as they are of having to yell at tourists to take their noise inside in the small hours of the morning, and in fact we have had to submit additional complaint logs to BDS since the June 21, 2019 decision. (See Condition B2 of the ASTR-B permit.)

On weekends, perhaps because the operators assume no one at the city will be checking their Air BNB listing then, the operators change their Air BNB listing by increasing the number of guests allowed to 12. On Mondays, they change the listing back to 6 guests, the maximum allowed per Conditions B1 and B10 of the ASTR permit.

The operators still have not provided an onsite manager for this property (Condition B13 of their ASTR permit). Neither of the Burses resides there. The property essentially functions as an unstaffed hotel. This leaves managing noise issues in the hands of us neighbors. Based on the operators' historic lack of interest in solving these problems (and the fact that Mr. Burse Jr. has called the police on neighbors who have complained), we have no confidence that they will suddenly become responsive to our concerns.

The operators have shown repeatedly that they are unwilling to operate this property in adherence with the conditions of their ASTR-B permit. We strongly urge you to maintain the revocation of the ASTR-B permit for 2946 NE 9th Avenue.