



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF WILLIAM HOLDNER

CASE NO. 3080350
[Bureau Case No. 07-181941-HS]

PROPERTY / ZONE / PARK: 2233-2243 NW Flanders St.

DATE OF HEARING: October 27, 2008

APPEARANCES:

Mr. William Holdner, Appellant

Mr. Ed Marihart, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. William Holdner, Appellant, appeared and testified at the hearing. Mr. Edward Marihart, Neighborhood Inspections Manager, Bureau of Development Services for the City of Portland, appeared and testified at the hearing. The Hearings Officer makes this decision based upon the testimony of Mr. Holdner and Mr. Marihart and the exhibits admitted, without objection from either party, into the evidentiary record (exhibits 1 through and including 28).

The Hearings Officer notes that Mr. Holdner's appeal arose from the issuance, by the Bureau of Development Services, of a letter dated September 16, 2008 (hereafter referred to as the "Determination Letter", Exhibit 5.) Based upon his testimony at the hearing, Mr. Holder disagreed with the Determination Letter because he believed that violations #2 and #8, referenced in the Determination Letter, had been corrected on or before July 30, 2008 (date of administrative hearing leading to the issuance of the Determination Letter). Mr. Holdner testified that the alleged electrical violation was corrected, per conversation between the electrical contractor employed by Mr. Holdner and the City Inspector, effective July 30, 2008. Mr. Holdner testified that, prior to July 30, 2008, Apartment Unit #11 (the unit subject to violation #8), had been relet to a new tenant who had agreed to use the apartment only as a one bedroom unit. Mr. Holdner emphasized, in his testimony, that his role in this case is as a trustee for a trust involving a trustor who is now deceased. Mr. Holdner stated that he used his best efforts to correct all violations listed by the City (see for example, Exhibit 10) and that he does not wish

to expend any additional funds on physical improvements/repairs/renovation of the subject property until the property is sold and the future buyer indicates his/her/its intentions regarding the use of the subject property.

Mr. Marihart reviewed exhibits, 4, 5, 19, 21, 22, 23 and 28 during his testimony. Mr. Marihart testified that the case remains open at the Bureau of Development Services based upon the violations related to work completed at apartment #11 without issuance of a valid permit (violations #8 and #15).

Exhibit 23, a Housing Maintenance Notice – Inspection Checklist, indicates that one of the violations is “possible unapproved bedroom” (see also exhibit 22, photos of “unapproved bedroom” – reference comments for unit #11). Exhibit 21, a Notice of Violation – Property Maintenance Code, lists as violation #8 “Permit Required: Unapproved SW bedroom created without obtaining required permits and inspections. 29.05.040, 29.50.010, 29.50.020.” Later, in Exhibit 21, the inspector noted that “a commercial building and electrical permit are required to correct item(s) #8. 29.05.040, 20.50.010, 29.50.020.” (See also Exhibit 6, 9, 19). All of these exhibits (notices) were mailed to Mr. Holdner. Exhibit 6 added a further violation stating that “Permit Required: Work done without obtaining permits and inspections. Violations include but are not limited to: Unit #11: SW attic space which was done, such as insulation installation, framing for ceiling, installation of gypsum board wall and ceiling coverings....The building permit may require additional corrections. 29.05.040, 29.50.010, 29.50.020.” Later, in exhibit 6, it states that “a commercial building permit is required to correct item(s) #8 & #15.”

Mr. Holdner testified that he was instructed, by City staff, to access the internet (web) for permit requirements. Mr. Marihart testified that the change from an attic space to a habitable residential unit in the subject property (multi-unit apartment building) required a commercial building permit. The Hearings Officer finds this testimony to be consistent with Exhibits 6, 9, 19 and 23, and inspector comments made in exhibit 28 (see May 19/08 Dan Collins, comments paragraph 2). The Hearings Officer finds that modification, in the past, from an attic area to a habitable area required a commercial building permit (See Oregon Specialty Code, Section 105; http://www2.iccsafe.org/states/oregon/08_Residential/08Res_Frameset.html). The Hearings Officer finds no evidence in the record to suggest that a permit was obtained, in the past, for the conversion of space from attic to habitable apartment, or for the insulation and wall improvements described by Mr. Holdner. The Hearings Officer finds that violations #8 and #15 did exist on July 30, 2008 (date of the Administrative Hearing leading to the issuance of Exhibit 5, the Determination Letter). The Hearings Officer finds that violation #2 was corrected by July 30, 2008.

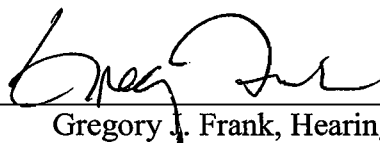
The Hearings Officer finds that the Determination Letter findings and conclusions that violation #8 existed as of July 30, 2008 is correct. The Hearings Officer finds that the Bureau of Development Services conclusion that two months enforcement fees were cancelled and other fees remain is correct. The Hearings Officer therefore upholds the Determination Letter and denies Mr. Holdner's appeal.

ORDER AND DETERMINATION:

1. The appeal of Mr. William Holdner, Trustee on behalf of Holdner, William TR & Baum, Jane, TR of real property located at 2233-2243 NW Flanders St, Portland, Oregon, is denied.
2. This order has been mailed to the parties on October 28, 2008.

3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 28, 2008



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Marihart, Ed	Received
2	9/17/08 Appeal Letter, Holdner to Neighborhood Inspections	Marihart, Ed	Received
3	Appeal form page 2	Marihart, Ed	Received
4	Case history	Marihart, Ed	Received
5	9/16/08 Administrative Review Determination for Fees Assessed Letter	Marihart, Ed	Received
6	8/5/08 Notice of Violation - Property Maintenance Code - Progress Report Letter	Marihart, Ed	Received
7	7/30/08 Memo from Adam Etherington, Frahler Electric Co.	Marihart, Ed	Received
8	Memo from ProDrain	Marihart, Ed	Received
9	7/23/08 Notice of Violation - Reoccupation over Violation Letter	Marihart, Ed	Received
10	7/23/08 Notice of Violation - Additional Violations Letter	Marihart, Ed	Received
11	7/21/08 Photos	Marihart, Ed	Received
12	7/18/08 Letter Melissa Kuhn to Holdner, Backstrom, Baum & Co.	Marihart, Ed	Received
13	6/30/08 Enforcement Fee Increase Notification	Marihart, Ed	Received
14	Multnomah County Property Records	Marihart, Ed	Received
15	Billing Statement	Marihart, Ed	Received
16	5/15/08 Letter Holdner to BDS	Marihart, Ed	Received
17	5/15/08 Letter Holdner to BDS	Marihart, Ed	Received
18	5/15/08 Letter Holdner to Collins	Marihart, Ed	Received
19	5/14/08 Notice of Violation - Additional Violations	Marihart, Ed	Received
20	3/18/08 Property Maintenance Violation Code Enforcement Fee - Assessment Notice and Billing Statement	Marihart, Ed	Received
21	1/17/08 Notice of Violation - Property Maintenance Code	Marihart, Ed	Received
22	12/12/08 Photos	Marihart, Ed	Received
23	Housing Maintenance Notice - Inspection Checklist	Marihart, Ed	Received
24	Mailing List	Hearings Office	Received
25	Hearing Notice	Hearings Office	Received
26	Request to reschedule	Marihart, Ed	Received
27	Rescheduled hearing notice	Hearings Office	Received
28	AMANDA data printout	Marihart, Ed	Received

