



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. ALICIA L. SIERRA-SOTO, respondent

CASE NO. 2090030
[Bureau Case No. 08-120155 CC]

PROPERTY: 1507 NE 63rd Avenue

LEGAL DESCRIPTION:
Lawndale; E 45' of Lot 7, Block 12,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: June 10, 2009

APPEARANCES:

Ms. Alicia Sierra-Soto, Respondent

Ms. Michelle Seward, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Michelle Seward ("Ms. Seward"), Senior Planner for the City of Portland Bureau of Development Services, appeared and testified on behalf of the City of Portland ("City"). Ms. Alicia Sierra-Soto ("Ms. Sierra-Soto"), Respondent, appeared at the hearing and testified on her own behalf. Ms. Maria Acott, a City of Portland Bureau of Development Services employee, provided interpretive services (English/Spanish) for the benefit of Ms. Sierra-Soto. Ms. Acott was administered an oath of interpreter whereby she agreed to make a true and impartial translation/interpretation of the proceedings in an understandable manner to Ms. Sierra-Soto using her best skills and judgment. Ms. Acott affirmed such oath. Ms. Sierra-Soto agreed to have Ms. Acott interpret for her in this case. This case involved real property commonly referred to as 1507 NE 63rd, Portland, Oregon (the "Subject Property"). The Hearings Officer admitted exhibits 1 through and including 17.

Ms. Seward, in her testimony, reviewed exhibits 1 through and including 16. Ms. Seward stated that this case involves one violation identified in the Complaint (Exhibit 1) and another violation that was observed during the most recent inspection. The violation identified in the Complaint (Exhibit 1) is "construction of over height fence (greater than 3 ½ feet high) installed within the required 10 foot front building setback in violation of Portland Zoning Code Section 33.120.285." (hereafter the "Fence Violation"). Ms. Seward stated that the violation observed during the most recent inspection involved a vehicle parked in a location not consistent with the

Portland Zoning Code. Ms. Seward testified that a complaint was filed with the City noting that a fence was constructed at the Subject Property in violation of the Portland Zoning Code. Ms. Seward stated that a City Inspector visited the Subject Property and confirmed the Fence Violation did exist. Ms. Seward stated that a violation notice was left at the Subject Property and a written notice was sent to Ms. Sierra-Soto at the Subject Property. Ms. Seward utilized photos (Exhibits 5, 7, 9, 11 and 16) to assist in the description of the Fence Violation. Ms. Seward stated that Exhibit 16 is a photo taken on June 9, 2009 and that the Fence Violation remained uncorrected.

Ms. Seward requested an Order from the Hearings Officer requiring Ms. Sierra-Soto to (1) correct the Fence Violation and to remove the vehicle parked in the unapproved location, (2) award a civil penalty in the amount of \$1,843.08 to pay for expenses incurred by the City from the date the case was opened to the date of the hearing, and (3) impose an additional civil penalty of \$5,000 as an incentive for Ms. Sierra-Soto to correct the Fence Violation and the parking in unlawful area violation; the \$5,000 civil penalty to be suspended for 30 days to permit Ms. Sierra-Soto an opportunity to correct the violations and avoid the imposition of the \$5,000 additional civil penalty.

Ms. Sierra-Soto asked cross examination questions of Ms. Seward. Ms. Sierra-Soto's questions are characterized by the Hearings Officer as relating to Ms. Sierra-Soto's concerns about (1) the City's motives in pursuing this case, (2) the lack of the City to respond to her in Spanish (her native language), (3) why did the City wait for 10 years after the fence was built to bring the case, (4) why other properties in the neighborhood are not cited for similar violations, and (5) how does the City expect her to pay the fees and penalties assessed or requested in this case?

Ms. Seward responded with the following comments. First, she stated that the City was responding to a complaint and the City did not, as its own idea, go and inspect the Subject Property. Ms. Seward stated that the City does not have, as a motive, to single out Ms. Sierra-Soto because she is Hispanic. Ms. Seward stated that upon receipt of Ms. Sierra-Soto's letter in Spanish she requested a Spanish speaking city inspector to interpret the letter (Mr. Gonzales) and Ms. Seward took notes of that conversation (Exhibit 17). Ms. Seward stated that a city inspector, shortly after receipt of Exhibit 17, visited the Subject Property where contact with Ms. Sierra-Soto's husband was made. Ms. Seward stated that a city inspector had a conversation with Ms. Sierra-Soto's husband and the inspector described the Fence Violation, methods to address the Fence Violation, and that the inspector was told by Ms. Sierra-Soto's husband that he would explain the situation to Ms. Sierra-Soto. Ms. Seward stated that the inspector left a copy of an aerial photo showing where the fence was located and the minimum it had to be moved to satisfy the Portland Zoning Code. Ms. Seward stated that the inspector who spoke with Ms. Sierra-Soto's husband told her that the husband appeared to understand and communicate in English. Ms. Seward stated that the City did not wait for 10 years to start a case related to the Fence Violation at the Subject Property but rather the City responded, in a timely manner, to a complaint received by the City. Ms. Seward stated that the City generally does not, without a complaint filed, investigate suspected/alleged violations. Ms. Seward responded to Ms. Sierra-Soto's money concern by stating that she was, initially, only asking for a civil penalty to recover costs incurred by the City associated with this case. Ms. Seward stated that the reason for the additional \$5,000 civil penalty was as an incentive to Ms. Sierra-Soto to correct the violations in a timely manner.

Ms. Sierra-Soto testified that she understands now that she must correct the Fence Violation and she wants to follow the City laws and rules. Ms. Sierra-Soto stated she has limited money to pay fees, fines, civil penalties and the like. Ms. Sierra-Soto requested the name of the person "complaining" about her fence. Ms. Sierra-Soto said that she felt this case was brought only because she was Hispanic. Ms. Sierra-Soto stated that the fence was in place at the Subject Property when she bought the Subject Property; she did not build the fence. Ms. Sierra-Soto stated that she did not expect the "situation" to get so out of control as to result in a hearing and more costs.

The Hearings Officer finds that there is simply no evidence in the record to support a finding that the City pursued this case because Ms. Sierra-Soto is Hispanic; the Hearings Officer finds there is no evidence that the City acted

in a discriminatory manner. The Hearings Officer finds that the City responds to complaints received about possible violations of the Portland Zoning Code and that is what it did in this case. The Hearings Officer finds that Ms. Sierra-Soto did not provide any evidence that the Fence Violation did not exist. The Hearings Officer finds Ms. Seward provided substantial evidence, including her testimony and referenced exhibits, to find that the Fence Violation does exist. The Hearings Officer finds that both Ms. Seward and Ms. Sierra-Soto agreed that a vehicle, at the time of the photo in Exhibit 17, was parked in a location not permitted by the Portland City Code.

The Hearings Officer finds that the City provided legally required notices and further that a conversation occurred between a city inspector and Ms. Sierra-Soto's husband, describing the nature of the Fence Violation and methods to correct the Fence Violation. The Hearings Officer finds that Ms. Sierra-Soto was provided notice of the possible consequences if the Fence Violation was not timely corrected. The Hearings Officer finds that the sum of \$1,843.08 represents costs incurred by the City in conducting the inspections and holding this hearing; therefore, the assessment of a civil penalty in the amount of \$1,843.08 is reasonable and appropriate. If Ms. Sierra-Soto fails to pay the \$1,843.08 civil penalty by July 1, 2009, then the unpaid amount shall become a lien against the Subject Property. The Hearings Officer finds that Ms. Sierra-Soto has had notice of the Fence Violation since early April, 2008 and has not corrected the Fence Violation despite numerous notices and demands made by the City. The Hearings Officer finds that an additional incentive of \$5,000, suspended for 60 days from the effective date of this Order (rather than the 30 days requested by Ms. Seward) is reasonable and appropriate. The Hearings Officer finds that if Ms. Sierra-Soto corrects the Fence Violation within the 60 days, the additional \$5,000 civil penalty shall be waived. However, the Hearings Officer finds that if the Fence Violation is not corrected within the 60 days, the additional \$5,000 civil penalty shall become due and payable and a lien upon the Subject Property.

ORDER AND DETERMINATION:


1. Respondent (Ms. Sierra-Soto) shall correct the Fence Violation and shall remove vehicle(s) parked in unapproved locations and shall undertake all actions necessary to prevent reoccurrence.
2. A civil penalty in the amount of \$1,843.08 is assessed and shall be due and payable on July 1, 2009, and if not paid by July 1, 2009, the unpaid balance shall become a lien against the Subject Property on July 2, 2009.
3. An additional civil penalty shall be assessed in the amount of \$5,000. The additional civil penalty shall be suspended until September 1, 2009. If Respondent corrects the Fence Violation (correction means, for this paragraph, the Respondent corrects the violation, requests a City inspection, the City inspects the Subject Property and finds the violation is corrected and the City submits to the Hearings Office a written statement indicating the Fence Violation is corrected) by 4:00 p.m. on September 1, 2009, the additional \$5,000 civil penalty shall be waived. If the Fence Violation is not corrected by 4:00 p.m. on September 1, 2009, then the civil penalty shall become immediately due and payable on September 2, 2009, and a lien shall be filed to reflect the additional \$5,000 civil penalty against the Subject Property.
4. This order has been mailed to the parties on June 17, 2009, and shall become final and effective on July 1, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date. This case will be closed on September 3, 2009.

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

Dated: June 17, 2009

GJF:rs

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint	Seward, Michelle	Received
2	Mailing List	Seward, Michelle	Received
3	Multnomah County Property Records	Seward, Michelle	Received
4	GARTH printout	Seward, Michelle	Received
5	4/7/08 Photo	Seward, Michelle	Received
6	4/9/09 Notice of Zoning Violation letter, Joe Chamberlain to Sierra-Soto	Seward, Michelle	Received
7	5/8/08 Photos	Seward, Michelle	Received
8	5/12/08 Notice of Enforcement Penalty letter	Seward, Michelle	Received
9	1/16/09 Photos	Seward, Michelle	Received
10	1/16/09 Notice of Possible Code Hearing	Seward, Michelle	Received
11	4/15/09 Photos	Seward, Michelle	Received
12	Mailing List	Hearings Office	Received
13	Hearing Notice	Hearings Office	Received
14	Notice of Rights and Procedures	Hearings Office	Received
15	Personal Service & Service by Posting with photo attached	Seward, Michelle	Received
15a	Photo dated 6/2/09 showing posting on door	Seward, Michelle	Received
16	Photos (2 pgs.) with 1 duplicate copy for respondent	Seward, Michelle	Received
17	Handwritten notes (1 pg.)	Seward, Michelle	Received