



CITY OF

PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. BERNARD STUPFEL, respondent

CASE NO. 2090053
[Bureau Case No. 02-106015-HS]

PROPERTY / PARK: 6736 SE Gladstone Street

LEGAL DESCRIPTION:
Kern PK; Lot 23 Block 7, 1S2E08CD-20500,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: October 7, 2009

APPEARANCES:

Mr. Mitchell McKee, for the City of Portland

HEARINGS OFFICER: Mr. Ian Simpson

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Stupfel did not appear at the October 7, 2009 hearing. On October 6, 2009 the Hearings Office received a request from Mr. Stupfel to reschedule the hearing. The Hearings Officer found that since there were several Fire, Life, Safety violations listed in the City's Complaint, it would not be appropriate to reschedule the hearing. Exhibits 1 through and including 34 were received into the record without objection.

Mitch McKee, Senior Housing Inspector, Bureau of Development Services, testified on behalf of the City. He described the subject house as being a single family, owner occupied house and property. Mr. McKee stated that the taxes are current for the property. Mr. McKee described the 27 violations listed in the City's Complaint, Attachment A. Several of the violations are Fire, Life, Safety violations, including electrical safety violations, and excess accumulation of personal items blocking egress and blocking windows. Mr. McKee described a large pile of trash and debris in the yard, which he estimated at about ten cubic yards.

Mr. McKee testified that cases for the subject property started in 2002, with two nuisance and two disabled vehicle cases. Mr. McKee stated that there was about \$15,000.00 in revolving penalties current on the property. Mr. McKee stated that in the past the property owner was referred to a non-profit organization for assistance. The City has sent the owner requests to submit information for waivers, but with no response. Mr. McKee stated that 13 letters or notices have been sent to the property owner. There have been five direct contacts, with the most

recent contact on June 3, 2009. Mr. McKee stated that his impression is that Mr. Stupfel wants to make repairs, but is not able to do so.

Mr. McKee requested relief (Exhibit 1) by requiring the respondent to correct the listed violations and comply with the City Code, and to undertake all actions necessary to prevent reoccurrence.

Mr. McKee requested a civil penalty of \$7,917.08. This penalty includes \$1,702.08, based on the cost of 18 housing inspections, at \$94.56 each. It also includes \$1,215.00 to cover the cost of bringing the case to the Hearings Office. The penalty also includes \$5,000.00, to help provide an incentive for the owner to appear at the hearing, and based on the history of the property and the time the case has been open, and the several serious Fire, Life, Safety violations. Mr. McKee said that there had been plenty of opportunity to make repairs in seven years.

Mr. McKee requested that if the respondent failed to correct all Fire, Life, Safety violations within 30 days of the effective date of this Order, then the civil penalty would be \$5,000.00. Mr. McKee suggested that \$5,000.00 was an incentive to encourage the respondent to make these repairs.

Mr. McKee requested that if the respondent failed to request and obtain approvals for all Housing Code violations within 60 days of the effective date of this Order, then the civil penalty would be \$10,000.00. Mr. McKee suggested that \$10,000.00 was an incentive to encourage the respondent to take this action.

Mr. McKee requested that if the respondent failed to correct all the violations within 90 days of the effective date of this Order, then the civil penalty would be \$10,000.00. Mr. McKee suggested that \$10,000.00 was an incentive to encourage the respondent to complete the needed actions.

Mr. McKee requested the vacation of the property because of the severe Fire, Life, Safety issues. He stated that there was no information that anyone besides the owner lived on the property, and so the City was not asking for any relocation funding.

Mr. McKee requested that the Hearings Officer retain jurisdiction in the case for 90 days.

The Hearings Officer finds factors that may be considered in assessing civil penalties include the history of the respondent in taking corrective actions, the economic and financial condition of the respondent, the gravity and magnitude of the violations, and the respondent's cooperativeness in correcting the violations (Portland Policy Document ADM 9.01, rule 17).

The Hearings Officer finds that a civil penalty for the City to recoup its costs in the case is entirely appropriate. The Hearings Officer finds that the \$5,000.00 penalty is appropriate, given the length of time the case has been open, and the many years available to make the repairs if the respondent chose to do so.

One of the Hearings Officer's primary concerns is to have the violations corrected. The Hearings Officer finds that the additional \$5,000.00 and two \$10,000.00 civil penalties, suspended to give the respondent time to make repairs, are appropriate to serve as incentives to the respondent to correct the violations and bring the property into compliance.

The Hearings Officer finds that retaining jurisdiction for 90 days is appropriate, since the Order includes penalties that may not be imposed until 90 days after the effective date of the Order.

The Hearings Officer finds that the testimony and evidence provided by Mr. McKee provides substantial and credible evidence confirming the listed violations continue to exist on the subject property, or have not been inspected to verify that they no longer exist. The Hearings Officer finds that the relief the City requests is appropriate and is granted.

ORDER AND DETERMINATION:

Respondents shall correct the listed violations and comply with the City Code, undertake all actions necessary to prevent reoccurrence, and have the property inspected and approved by the City of Portland.

A civil penalty in the amount of \$7,917.08 is hereby imposed, said penalty to be due and payable immediately, and if not paid by November 5, 2009 shall become a lien on the subject property.

A \$5,000.00 civil penalty is hereby imposed. This civil penalty shall be suspended until 4:30 p.m. on December 7, 2009. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on December 7, 2009 indicating all Fire, Life, Safety violations have been corrected, then the \$5,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on December 7, 2009, then the \$5,000 civil penalty shall become due and payable, and if not paid shall become a lien against the Subject Property on December 8, 2009.

A \$10,000.00 civil penalty is hereby imposed. This civil penalty shall be suspended until 4:30 p.m. on January 6, 2010. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on January 6, 2010 indicating the respondent has obtained approvals for all Housing Code violations, then this \$10,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on January 6, 2010, then the \$10,000 civil penalty shall become due and payable, and if not paid shall become a lien against the Subject Property on January 7, 2010.

A \$10,000.00 civil penalty is hereby imposed. This civil penalty shall be suspended until 4:30 p.m. on February 5, 2010. If the Bureau of Development Services provides written confirmation to the Hearings Office before 4:30 p.m. on February 5, 2010 indicating all violations have been confirmed corrected by inspections, then this \$10,000 civil penalty shall be canceled. If the Hearings Office does not receive such confirmation by 4:30 p.m. on February 5, 2010, then the \$10,000 civil penalty shall become due and payable, and if not paid shall become a lien against the Subject Property on February 8, 2010.

Given the Fire, Life, Safety violations on the subject property, it must be vacated as of the effective date of this Order, November 5, 2009. If written confirmation has been provided by the City inspector to the Hearings Office on or before November 5, 2009 at 4:30 p.m., indicating that all Fire, Life, Safety violations have been corrected to the satisfaction of the City inspector, then the order to vacate the property shall be waived.

The Hearings Officer shall retain jurisdiction in this case until February 9, 2010.

This order has been mailed to the parties on October 22, 2009, and shall become final and effective on November 5, 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 February 11, 2010.

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

Dated: October 22, 2009



Ian Simpson, Hearings Officer

IS:cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint w/Attachment A - List of Violations	Gonzales, Lee	Received
2	Bureau Notification List	Gonzales, Lee	Received
3	Photo	Gonzales, Lee	Received
4	Multnomah Co. Assessor Property Information	Gonzales, Lee	Received
5	Photo dated 2/26/02	Gonzales, Lee	Received
6	Photos dated 1/27/05 (3 pgs)	Gonzales, Lee	Received
7	Photos dated 7/26/07	Gonzales, Lee	Received
8	AMANDA data printouts (2 pgs)	Gonzales, Lee	Received
9	Copies of inspector index cards & notes (7 pgs)	Gonzales, Lee	Received
10	Case History (3 pgs)	Gonzales, Lee	Received
11	Notice of Violation w/List of Violations dated 2/14/02	Gonzales, Lee	Received
12	Notice of Violation Progress Report w/List of Violations dated 4/10/03	Gonzales, Lee	Received
13	Notice of Violation Progress Report w/List of Violations dated 1/5/05	Gonzales, Lee	Received
14	Notice of Additional Violations w/List of Violations dated 2/9/05	Gonzales, Lee	Received
15	Notice of Violation Progress Report w/List of Violations dated 3/20/06	Gonzales, Lee	Received
16	Notice of Violation Progress Report w/List of Violations dated 1/22/07	Gonzales, Lee	Received
17	Notice of Violation Progress Report w/List of Violations dated 7/27/07	Gonzales, Lee	Received
18	Notice of Violation Referral to Hearings Officer w/List of Violations dated 10/9/08	Gonzales, Lee	Received
19	Notice of Violation Referral to Hearings Officer w/List of Violations dated 5/21/09	Gonzales, Lee	Received
20	Lien Accounting Report	Gonzales, Lee	Received
21	Notice of Housing Code Violation and Possible Lien dated 3/28/02	Gonzales, Lee	Received
22	Notice of Temporary Satisfaction of Housing Code Violation and Possible Lien dated 10/5/04	Gonzales, Lee	Received
23	Notice of Housing Code Violation and Possible Lien dated 10/5/04	Gonzales, Lee	Received
24	Notice of Code Enforcement Fee Increase dated 6/6/02	Gonzales, Lee	Received
25	Enforcement Fee Increase Notification dated 9/26/07	Gonzales, Lee	Received
26	Enforcement Fee Increase Notification dated 6/20/08	Gonzales, Lee	Received
27	Enforcement Fee Increase Notification dated 7/1/09	Gonzales, Lee	Received
28	Memo to respondent dated 5/5/04	Gonzales, Lee	Received
29	Mailing list	Hearings Office	Received
30	Hearing notice	Hearings Office	Received
31	Notice of Rights & Procedures	Hearings Office	Received
32	Personal Service and Service by Posting	Gonzales, Lee	Received
33	USPS Urgent Mail Delivery Notification	Hearings Office	Received
34	Letter	Stupfel, Bernard	Received