



CITY OF

**PORTLAND, OREGON**

**OFFICE OF THE CITY AUDITOR**  
**Hearings Office**

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## **HEARINGS OFFICER'S ORDER**

**APPEAL OF VIA HERSHOLT**

**CASE NO. 1090261**

**DESCRIPTION OF VEHICLE: Mazda Protégé (OR 660DGZ)**

**DATE OF HEARING: December 3, 2009**

**APPEARANCES:**

**Via Hersholt, appellant**

**HEARINGS OFFICER: Mr. Gregory J. Frank**

Ms. Hersholt appeared and testified at the hearing. The Hearings Officer makes this decision based upon the testimony of Ms. Hersholt and the documents admitted into the evidentiary record (Exhibits 1 through and including 7).

Ms. Hersholt testified that November 18, 2009 she parked on NW Quimby in the vicinity of NW 23<sup>rd</sup>. Ms. Hersholt stated that she did park in front of a residential structure but did not park in a driveway. Ms. Hersholt stated that she did see the yellow paint on the curb returns for the driveway and she was not parked in the yellow paint area. Ms. Hersholt stated that she did not park in front of the "wings" to the curb driveway wings.

The parking patrol enforcement officer submitted a written statement (Tow Hearing Report – Exhibit 5). The parking enforcement officer statement says:

"Oregon Mazda 660DGZ was dispatched to me as blocking a driveway at 2256 NW Quimby. The vehicle in question was blocking the driveway with the near passenger portion of the vehicle – please see photos."

Three photos can be seen on Exhibit 6. The top left photo shows the tow vehicle's license plate. The top right and bottom left photos are so dark as to be virtually useless in assessing the location of the vehicle to a driveway. There are notations on the photos that the Hearings Officer assumes were made by the parking patrol officer who ordered the vehicle towed. The written notation for the bottom left photo says "yc apron." The Hearings Officer does is not aware of the meaning of "yc apron." Further, the phrase "yc apron" has no legal significance to the definition of a driveway (PCC 16.90.105). The written notation on the upper right photo has a left facing arrow and the words "into driveway" and an upward facing arrow saying "yellow curb apron." Because the photos are so dark the Hearings Officer has no way of confidently observing what the written notations are making reference to.

Ms. Hersholt was present and appeared to the Hearings Officer to be a credible witness. The City had no person at the hearing and submitted a written statement and photos. As the photos are so dark the Hearings Officer did not consider them in making this decision.

The City has the burden to persuade the Hearings Officer that it is more probable than not that Ms. Herholt's vehicle was parked in a driveway. The Hearings Officer has no reason to disbelieve either Ms. Hersholt or the parking enforcement officer (by the written statement on Exhibit 5). As such, the Hearings Officer finds the City did not carry its burden of proof. The Hearings Officer finds that the tow of Ms. Hersholt's vehicle on November 18, 2009 is not valid.

It is ordered that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: December 8, 2009

GJF:rs/cb

  
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Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement

Tow Number: 22950

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Hersholt, Via	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Tow hearing report	Parking Enforcement	Received
6	Parking violation & photos (photos nearly illegible/dark)	Parking Enforcement	Received
7	Receipts	Hersholt, Via	Received