



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. EARL E. IJAS and KATHRYN L. LAWRENCE, respondents

CASE NO. 2080043
[Bureau Case No. 98-001084-HS]

PROPERTY / ZONE / PARK: 2020 SE 32nd Place

LEGAL DESCRIPTION:
Section 01 1 S 1 E; TL 20000 0.08 Acres,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: January 14, 2009

APPEARANCES:

Respondents did not appear

Lee Gonzales, for the City of Portland

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A Notice of Hearing was sent to Earl E. Ijas and Kathryn L. Lawrence ("Respondents") on December 19, 2008. The Notice of Hearing was discovered, after the close of the January 2, 2009 hearing, to have been mailed to the address which contained an incorrect zip code. The Hearings Officer scheduled a second hearing for January 14, 2009 and the second Notice of Hearing was sent on January 2, 2009 to the correct address/zip code. Ms. Lawrence, one of the Respondents, contacted the Hearings Office and informed a hearing clerk that she had just picked up her mail, had no transportation and would not appear. The hearing clerk informed Ms. Lawrence, during the phone call, that she could submit documentation in support of her position in this case by faxing the information to the Hearings Office. No information was received from Ms. Lawrence, or any person on behalf of Respondents, prior to the close of the hearing. The Hearings Officer makes this decision based upon the testimony of Mr. Gonzales and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 41).

Mr. Gonzales testified at the January 2, 2009 hearing and the January 14, 2009 hearing. As no Respondents appeared at the second hearing (January 14, 2009) the Hearings Officer incorporates the testimony of Mr. Gonzales from the first hearing (January 2, 2009) into this decision.

Mr. Gonzales reviewed Exhibits 1 through and including 35 and described each. Mr. Gonzales reviewed each of the alleged violations listed in Exhibit 1a. Mr. Gonzales noted that violations 1, 2, 7, 8, 10, 11, and 12 (Exhibit 1a) are fire, life and safety violations. Mr. Gonzales described fire, life and safety violations as those that presented some significant safety risk to either the occupant of a residence or the neighboring properties. Based upon the testimony of Mr. Gonzales and the exhibits relevant to each violation, the Hearings Officer finds that violations 1 through and including 12, per Exhibit 1a, do exist at 2020 SE 32nd, Portland, Oregon ("Subject Property").

Mr. Gonzales called two witnesses at the January 14, 2009 hearing. The first witness, Mr. Douglas Sherman is the owner of adjacent property (common back property line with Subject Property). Mr. Sherman testified that he has lived at his current residence for 23 years and estimated that the Subject Property has been in a state of disrepair and nuisance for the last 10 years. He stated that during the last 10 years transients have camped in the yard and on the front porch. Mr. Sherman stated that on occasion transients living at the Subject Property have used the yard as their toilet. He stated that the roof supports are rotting/decaying, there is a broken window in the dormer, and a beehive in the back of the house. Mr. Sherman stated that rats and raccoons make the residence and yard at the Subject Property their home; creating health and safety risks for adjacent neighbors.

Ms. Jeanne Henry (Mr. Sherman's wife) also testified at the request of Mr. Gonzales. Ms. Henry testified that the front porch is close to collapsing. Ms. Henry stated that barrels of unknown contents have been in the yard for almost 10 years. Ms. Henry stated that on more than one occasion bricks have detached from the chimney and fallen down the roof to the ground.

Mr. Gonzales requested the Hearings Officer to do a number of things in this Order (Exhibit 1). Mr. Gonzales requested that the Hearings Officer order Respondents to correct the violations. The Hearings Officer finds this to be a reasonable request. Mr. Gonzales also requested that the Hearings Officer assess, immediately, a civil penalty in the amount of \$15,659.32; and place a lien upon the Subject Property in that amount. Mr. Gonzales stated that he calculated 47 inspections at the Subject Property were conducted by the City (\$4,444.32) and the cost of the hearing is \$1,215. Mr. Gonzales stated that this case has been open for over 10 years and that there has been very little action taken by the Respondents to correct the violations over that time. Mr. Gonzales stated that the Subject Property has a history of nuisance cases. Mr. Gonzales requested that a \$10,000 civil penalty be awarded against the Subject Property to reflect the inaction and/or inattention to addressing the violations. Mr. Gonzales stated that the comments of Mr. Sherman and Ms. Henry should be considered as indicative of the callous attitude the Respondents take towards the care of the Subject Property and the impacts upon neighboring property owners.

The Hearings Officer finds that the Respondents have made little if no effort to maintain the Subject Property free of housing violations and nuisances. The Hearings Officer finds that the requested \$10,000 civil penalty to be immediately awarded is reasonable and appropriate.

Mr. Gonzales requested that an additional civil penalty in the amount of \$5,000 be awarded. However, as an incentive to Respondents, Mr. Gonzales suggested that the \$5,000 additional civil penalty be suspended for approximately 30 days to allow Respondents an opportunity to correct the fire, life and safety violations (violations 1, 2, 7, 8, 10, 11, and 12 – per Exhibit 1a). Mr. Gonzales stated that if the fire, life and safety violations are corrected within the approximate 30 day period the \$5,000 civil penalty would be waived.

Mr. Gonzales requested that an additional civil penalty in the amount of \$10,000 (over and above the civil penalty of \$15,659.32 and \$5,000 referenced in the paragraphs above) be awarded. However, as an incentive to Respondents, Mr. Gonzales suggested that the \$10,000 additional civil penalty be suspended for approximately 60 days to allow Respondents an opportunity to correct all violations (violations 1, 2, 7, 8, 10, 11, and 12 that are considered fire, life and safety violations, and violations 3, 4, 5, 6 and 9 – per Exhibit 1a). Mr. Gonzales stated that if all violations are corrected with the approximate 60 day period the \$10,000 civil penalty would be waived.

Mr. Gonzales requested that an additional civil penalty of \$20,000 be awarded, over and above those civil penalties mentioned above, if all violations are not corrected by December 30, 2009.

Mr. Gonzales requested that the Hearings Officer authorize the City to summarily abate confirmed nuisances (tall grass and weeds, trash and debris, open and vacant building) and disabled vehicle violations at the Subject Property for a period of one year; such abatements to be permitted without search warrant.

The Hearings Officer finds that the additional civil penalty requests are reasonable and appropriate. The Hearings Officer finds that the Respondents have not responded to repeated requests by the City to correct the listed violations. The Hearings Officer finds that the additional civil penalties provide an appropriate incentive to Respondents to take necessary action to correct the violations. The Hearings Officer finds that correcting the violations in a timely manner is very important, in particular the fire, life and safety violations, for the protection of anyone at the Subject Property and those properties in the immediate neighborhood. The Hearings Officer finds that summary abatement is important because of the history of nuisance violations at the Subject Property. The Hearings Officer took into consideration Mr. Sherman's testimony that weeds from the Subject Property are invading neighboring properties in the granting of the City's request for summary abatement.

The Hearings Officer found this case to be particularly frustrating. This case has been open for 10 years and the Respondents have made little or no effort to correct the cited violations. The Hearings Officer found that neighbors have had to endure, for about 10 years, a property that subjected them to increased risk of vermin, weeds, unauthorized residents (transients) using the Subject as a public toilet, and a residential structure that is in a serious state of exterior deterioration. The Hearings Officer implores the City to investigate additional sanctions which may be imposed against the Subject Property and Respondents personally. The Hearings Officer sets an additional hearing for Wednesday, May 6, 2009 at 9:00 a.m. to consider a request by the City to amend its complaint (Exhibit 1).

ORDER AND DETERMINATION:

1. Respondents shall correct all violations listed on Exhibit 1a in compliance with the Portland City Code and undertake all actions necessary to correct such violations and/or prevent their reoccurrence.
2. A civil penalty in the amount of \$15,659.32 is assessed and shall become a lien on the Subject Property, if not yet paid, on February 3, 2009.
3. A civil penalty in the amount of \$5,000 shall be awarded. This civil penalty shall be suspended until 5:00 p.m. March 2, 2009. If Respondents correct all of the fire, life and safety violations listed on Exhibit 1a (violations 1, 2, 7, 8, 10, 11 and 12), demonstrated by a writing signed by a representative of the Bureau of Development Services and received by the Hearings Office prior to the 5:00 p.m. March 2, 2009 deadline, then the \$5,000 additional civil penalty shall be waived. If such writing indicating all violations are corrected is not received by the Hearings Office by the 5:00 p.m. March 2, 2009 deadline, the \$5,000 civil penalty shall be assessed and further shall become a lien against the Subject Property on March 3, 2009.
4. A civil penalty in the amount of \$10,000 shall be awarded. This civil penalty shall be suspended until 5:00 p.m. May 29, 2009. If respondents correct all of the violations listed on Exhibit 1a (violations 1 through and including 12), demonstrated by a writing signed by a representative of the Bureau of Development Services and received by the Hearings Office prior to the 5:00 p.m. May 29, 2009 deadline, then the \$10,000 additional civil penalty shall be waived. If such writing


indicating all violations are corrected is not received by the Hearings Office by the 5:00 p.m. May 29, 2009 deadline, the \$10,000 civil penalty shall be assessed and further shall become a lien against the Subject Property on June 1, 2009.

5. A civil penalty in the amount of \$20,000 shall be awarded. This civil penalty shall be suspended until 5:00 p.m. December 30, 2009. If respondents correct all of the violations listed on Exhibit 1a (violations 1 through and including 12), demonstrated by a writing signed by a representative of the Bureau of Development Services and received by the Hearings Office prior to the 5:00 p.m. December 30, 2009 deadline, then the \$20,000 additional civil penalty shall be waived. If such writing indicating all violations are corrected is not received by the Hearings Office by the 5:00 p.m. December 30, 2009 deadline, the \$20,000 civil penalty shall be assessed and further shall become a lien against the Subject Property on January 5, 2010.
6. The City shall have the right to summarily abate any future confirmed nuisance violations (including, but not limited to trash and debris, open and vacant building, disabled vehicle on private property) from the date of this Order until December 30, 2009. The City shall not be required to provide notice to Respondents, may proceed without a search warrant, and with the assistance of the Portland Police Bureau, if necessary.
7. The Hearings Officer shall retain jurisdiction in this case until January 6, 2010. The City is granted leave to submit a motion for an additional hearing and to amend its complaint to include, but not limited to, a request for demolition of all structures, request for additional civil penalties, and request for Respondents to be personally liable for additional civil penalties awarded. Any motion for a new hearing must be received by the Hearings Office on or before 4:30 p.m. no later than January 5, 2010. If no request for an additional hearing and/or amendment to the City's complaint is timely received, this case shall be closed on January 7, 2010.

Dated: January 20, 2009

GJF:rs/cb

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint	Gonzales, Lee	Received
1a	Attachment A - List of Violations	Gonzales, Lee	Received
2	Notification List	Gonzales, Lee	Received
3	Photo	Gonzales, Lee	Received
4	1/8/99 Photos	Gonzales, Lee	Received
5	10/26/00 Photos	Gonzales, Lee	Received
6	11/27/00 Photos	Gonzales, Lee	Received
7	10/22/01 Photos	Gonzales, Lee	Received
8	8/30/02 Photos	Gonzales, Lee	Received
9	11/4/02 Photos	Gonzales, Lee	Received
10	12/15/03 Photos	Gonzales, Lee	Received
11	2/24/04 Photo	Gonzales, Lee	Received
12	6/20/07 Photo	Gonzales, Lee	Received
13	Multnomah Assessor Property Information	Gonzales, Lee	Received
14	TRACS printout	Gonzales, Lee	Received
15	Inspection cards	Gonzales, Lee	Received
16	Case history	Gonzales, Lee	Received
17	TRACS printouts	Gonzales, Lee	Received
18	6/12/98 Notice of Violation - Property Maintenance Code letter, Loraine Fischer to Ijas/Lawrence	Gonzales, Lee	Received
19	2/1/99 Additional Violations letter, Fischer to Ijas/Lawrence	Gonzales, Lee	Received
20	10/25/01 Progress Report letter, Joe Williams to Ijas/Lawrence	Gonzales, Lee	Received
21	11/7/02 Progress Report letter, Williams to Ijas/Lawrence	Gonzales, Lee	Received
22	8/9/04 Progress Report letter, Ed Marihart to Ijas/Lawrence	Gonzales, Lee	Received
23	2/21/05 Progress Report letter, Steven Kass to Ijas/Lawrence	Gonzales, Lee	Received
24	2/13/06 Progress Report letter, Lynda Byers to Ijas/Lawrence	Gonzales, Lee	Received
25	5/5/06 Additional Violations letter, Kass to Ijas/Lawrence	Gonzales, Lee	Received
26	6/21/07 Progress Report letter, Edgar Bolden to Ijas/Lawrence	Gonzales, Lee	Received
27	10/16/07 Referral of Housing Case to Code Hearings Officer letter, Gonzales to Ijas/Lawrence	Gonzales, Lee	Received
28	10/14/08 Referral of Housing Case to Code Hearings Officer letter, Gonzales to Ijas/Lawrence	Gonzales, Lee	Received
29	6/6/02 Notice of Code Enforcement Fee Increase letter, Nancy Blackledge to Ijas/Lawrence	Gonzales, Lee	Received
30	9/26/07 Enforcement Fee Increase Notification letter	Gonzales, Lee	Received
31	6/30/08 Enforcement Fee Increase Notification letter	Gonzales, Lee	Received
32	3/13/06 letter, Veronica Nordeen to Lawrence	Gonzales, Lee	Received
33	City Lien Report	Gonzales, Lee	Received
34	Housing Maintenance Notice	Gonzales, Lee	Received
35	Mailing List	Hearings Office	Received
36	Hearing Notice	Hearings Office	Received
37	Notice of Rights and Procedures	Hearings Office	Received
38	Memo to Inspector Gonzales w/copy of returned mail: Occupant-Vacant	Hearings Office	Received
39	Updated mailing list	Hearings Office	Received
40	Rescheduled hearing notice	Hearings Office	Received
41	Returned Mail Memo	Hearings Office	Received