



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. MARY K. ENGBERG, FLORENCE S. MILLER, ET AL, respondents

CASE NO. 2090014
[Bureau Case No. 98-001339-HS]

PROPERTY / ZONE / PARK: 16 NE Ivy St.

LEGAL DESCRIPTION:
Williams Ave add; W 18' of Lot 3 block 7; E 10' of N 5.56' of Lot 4 Block 7; E 10' of Lot 5 Block 7,
1N1E27AA-06900,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: April 22, 2009

APPEARANCES:

Mr. Edgar Bolden, for the City

Respondents did not appear

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Edgar Bolden, City of Portland Housing Inspector, appeared and testified on behalf of the City. No person appeared on behalf of Respondents. A Notice of Hearing (Exhibit 47) was sent to Respondents on March 30, 2009 (hearing date of April 15, 2009). A letter from Ms. Carolyn Oakley, on behalf of Respondents, was received on April 10, 2009 (Exhibit 49). This letter requested a postponement and indicated that the named Respondents are deceased. The hearing was rescheduled to April 22, 2009 (Exhibit 50). The Hearings Office received no further contact on behalf of Respondents after the April 10, 2009 letter (Exhibit 49). The Hearings Officer makes this decision based upon the testimony of Inspector Bolden and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 51).

Inspector Bolden testified that he has had no contact with Respondents or anyone on behalf of Respondents. Inspector Bolden stated that he has been contacted by a real estate agent, on or about April 8th or 9th, who inquired about the property located at 16 NE Ivy Street, Portland, Oregon (the "Subject Property") and that he attempted to telephone Respondents and/or a representative and received no call back.

Inspector Bolden testified that this case was opened, as a result of a complaint, in 1998 (lack of heat). Inspector Bolden stated that shortly thereafter, the property was vacated and, to the best of his knowledge, has been vacant since 1998. Inspector Bolden stated that the violations listed on "Attachment A" of Exhibit 1 do exist. Inspector Bolden indicated that it has been a very long time since he, or any other City inspector, has been inside the residence at the Subject Property. Inspector Bolden stated he believed additional violations would be found if an interior inspection was conducted. Inspector Bolden stated, since 1998, 8 nuisance cases have been initiated involving the Subject Property; 3 of which were City abated. Inspector Bolden stated that 2 of the violations (violations 20 and 21 on "Attachment A" of Exhibit 1) are fire, life and safety violations. Inspector Bolden indicated that the condition of the residence at the Subject Property creates an attractive nuisance for transient use, children playing, and criminal activity. The Hearings Officer finds, based upon the evidence in the record supplied by the City (Exhibits 5 through 30) and the testimony of Inspector Bolden, that violations 1 through and including 24 ("Attachment A," Exhibit 1) do exist at the Subject Property.

Inspector Bolden requested that the Hearings Officer order Respondents to correct all violations. The Hearings Officer finds this request by the City to be reasonable. Inspector Bolden requested that the Hearings Officer assess civil penalties in the amount of \$5,659.32 to recover the costs associated with the City inspections (47 inspections at \$94.56 each) and the cost of the hearing (\$1,215). The Hearings Officer finds this request to be reasonable. Inspector Bolden further requested that a civil penalty in the amount of \$10,000 be assessed in recognition that Respondents, or any representative of Respondents, have failed to make any significant effort to contact the City and make corrections to the violations (see, ADM-9.01 (17) – Code Hearings Officer Rules). Inspector Bolden noted that many of the corrections would involve small amounts of money and time but even those were not addressed. Inspector Bolden reiterated that this case has been open since 1998 without any significant effort made to correct the violations. The Hearings Officer finds that it is appropriate, considering the factors set forth in ADM – 9.01, Rule 17, to assess an additional civil penalty in the amount of \$10,000.

Inspector Bolden then requested a series of civil penalties which he described as providing incentive to Respondents, or any successors, to complete corrective activity at the Subject Property. The first action item to be completed by Respondents, according to Inspector Bolden, is to obtain necessary permits (possibly plumbing, electrical, structural or "full" residential). Inspector Bolden stated that he would like to meet at the Subject Property with Respondents or a representative of Respondents to confirm what permits are necessary. Inspector Bolden suggested that Respondents or a representative of Respondents, apply for and have issued all necessary permits within 30 days of the effective date of the Hearings Officer's Order. Inspector Bolden requested that the Hearings Officer assess a civil penalty, if all permits were not issued within 30 days, of \$10,000. The Hearings Officer finds that Inspector Bolden's request to have Respondents or a representative of Respondents, apply for and have issued permits within 30 days and if not assess a \$10,000 additional civil penalty is a reasonable and appropriate request and financial incentive.

Inspector Bolden then requested that an incentive should be provided to have Respondents or a representative of Respondents make progress towards completing the corrections of violations by requiring one or more inspection approvals to be granted (related to one or more of the permits issued) within 60 days and if one or more inspection approval is not granted the assessment of an additional \$10,000 civil penalty. The Hearings Officer finds it reasonable to require Respondents or a representative of Respondents to make timely efforts to correct the violations and that Mr. Bolden's 60 day time limit for receipt of one or more permit inspection approval(s) is appropriate.

Inspector Bolden requested that Respondents be given 90 days to complete all corrections requiring permits (all permits to be finalized) and if such corrections requiring permits are not made within the 90 day time limit an additional civil penalty of \$10,000 be assessed. Again, the Hearings Officer finds that this case has been open for a very long time with little progress towards corrections having been made. The Hearings Officer finds it reasonable and appropriate that incentives be provided to Respondents to work diligently to correct the violations.

The Hearings Officer finds it appropriate to give Respondents 90 days to final all permits required to correct violations and if the permits are not finalized, then an additional \$10,000 civil penalty shall be assessed.

As a final incentive, Inspector Bolden requested that the Hearings Officer require corrections to all violations be made within 90 days and if not made, an additional civil penalty of \$30,000 be assessed. The Hearings Officer finds that an incentive is appropriate for Respondents to have all violations corrected. The Hearings Officer finds that a more reasonable time frame is 150 days. The Hearings Officer finds the suggested additional civil penalty of \$30,000 is appropriate in this case; considering the long time the case has been open and general inattention to correcting the violations.

Inspector Bolden requested the Hearings Officer authorize the City to summarily abate confirmed nuisances for a period of 1 year. Inspector Bolden testified that the Subject Property has a history of nuisance violation cases (see Exhibit 12). The Hearings Officer notes that the only contact with Respondents is through a letter from a family member who lives in Albany (Exhibit 49). The Hearings Officer finds that Respondents and/or representatives of Respondents have a history of not timely responding to nuisance issues at the Subject Property and permitting the City to summarily abate confirmed nuisance problems is appropriate.

ORDER AND DETERMINATION:

1. Respondents shall correct all violations listed in Attachment A of Exhibit 1 in compliance with City of Portland Codes.
2. A civil penalty in the amount of \$15,659.32 is awarded and if not paid by May 13, 2009, shall become a lien upon the Subject Property.
3. An additional civil penalty in the amount of \$10,000 is awarded. This additional civil penalty (paragraph 3 of this Order) shall be suspended until 4:30 p.m. on June 12, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on June 12, 2009, indicating all necessary permits to correct the violations set forth on Attachment A of Exhibit 1 have been applied and paid for and issued, then this additional \$10,000 civil penalty (paragraph 3 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on June 12, 2009, then the additional \$10,000 civil penalty (paragraph 3 of this Order) shall become due and payable and become a lien against the Subject Property.
4. An additional civil penalty in the amount of \$10,000 is awarded. This additional civil penalty (paragraph 4 of this Order) shall be suspended until 4:30 p.m. on July 17, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on July 17, 2009 indicating one or more inspection approvals (per paragraph 3 of this Order) have been granted, then this additional \$10,000 civil penalty (paragraph 4 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on July 17, 2009, then the additional \$10,000 civil penalty (paragraph 4 of this Order) shall become due and payable and become a lien against the Subject Property.
5. An additional civil penalty in the amount of \$10,000 is awarded. This additional civil penalty (paragraph 5 of this Order) shall be suspended until 4:30 p.m. on August 21, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on August 21, 2009 indicating all necessary permits (per paragraph 3 of this Order) to correct the violations set forth on Attachment A of Exhibit 1 have been inspected and received final approval, then this additional \$10,000 civil penalty (paragraph 5 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on August 21, 2009, then the

additional \$10,000 civil penalty (paragraph 5 of this Order) shall become due and payable and become a lien against the Subject Property.

6. An additional civil penalty in the amount of \$30,000 is awarded. This additional civil penalty (paragraph 6 of this Order) shall be suspended until 4:30 p.m. on October 23, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on October 23, 2009 indicating all violations set forth on Attachment A of Exhibit 1 have been corrected, then this additional \$30,000 civil penalty (paragraph 6 of this Order) shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on October 23, 2009, then the additional \$30,000 civil penalty (paragraph 6 of this Order) shall become due and payable and become a lien against the Subject Property.
7. 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 May 30, 2010. The City shall not be required to provide notice to Respondent and may proceed without a search warrant, and with the assistance of the Portland Police Bureau, if necessary.
8. The Hearings Officer shall retain jurisdiction of this case until November 6, 2009. The case shall be closed on November 9, 2009.
9. This order has been mailed to the parties on April 29, 2009, and shall become final and effective on May 13, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
10. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 29, 2009


Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint with Attachment A - List of Violations	Bolden, Edgar L.	Received
2	Notification List	Bolden, Edgar L.	Received
3	Photo	Bolden, Edgar L.	Received
4	Multnomah Assessor Property Information	Bolden, Edgar L.	Received
5	3/26/07 Photos	Bolden, Edgar L.	Received
6	4/7/08 Photos	Bolden, Edgar L.	Received
7	8/8/07 Photos	Bolden, Edgar L.	Received
8	9/23/08 Photos	Bolden, Edgar L.	Received
9	12/16/08 Photos	Bolden, Edgar L.	Received
10	12/31/08 Photo	Bolden, Edgar L.	Received
11	TRACS printout	Bolden, Edgar L.	Received
12	TRACS printouts	Bolden, Edgar L.	Received
13	Inspection cards	Bolden, Edgar L.	Received
14	Case history	Bolden, Edgar L.	Received
15	PortlandMaps printout	Bolden, Edgar L.	Received
16	8/3/98 Notice of Violation - Property Maintenance Code		

	letter, Jim Tropfenbaum to Engberg	Bolden, Edgar L.	Received
17	2/12/03 Progress Report letter, Ed Marihart to Engberg	Bolden, Edgar L.	Received
18	10/16/03 Progress Report letter, Victor Unkow to Engberg	Bolden, Edgar L.	Received
19	4/29/04 Progress Report letter, Lynda Byers to Engberg	Bolden, Edgar L.	Received
20	5/19/05 Progress Report letter, Byers to Engberg	Bolden, Edgar L.	Received
21	1/27/06 Progress Report letter, Byers to Engberg	Bolden, Edgar L.	Received
22	9/1/06 Progress Report letter, Byers to Engberg	Bolden, Edgar L.	Received
23	3/27/07 Additional Violations letter, Peggy Whelan to Engberg/By Miller	Bolden, Edgar L.	Received
24	6/25/07 Progress Report letter, Bolden to Engberg	Bolden, Edgar L.	Received
25	8/21/07 Progress Report letter, Bolden to Engberg	Bolden, Edgar L.	Received
26	2/5/08 Progress Report letter, Bolden to Engberg	Bolden, Edgar L.	Received
27	2/5/08 Referral of Housing Case to Code Hearings Officer, Bolden to Engberg	Bolden, Edgar L.	Received
28	2/7/08 Referral of Housing Case to Code Hearings Officer (Updated) letter, Bolden to Engberg	Bolden, Edgar L.	Received
29	12/17/08 Progress Report letter, Bolden to Engberg	Bolden, Edgar L.	Received
30	12/17/08 Referral of Housing Case to Code Hearings Officer (Updated) letter, Bolden to Engberg	Bolden, Edgar L.	Received
31	City Lien Report	Bolden, Edgar L.	Received
32	Letter, Engberg/Miller Property to Peggy	Bolden, Edgar L.	Received
33	Letter from Engberg/Miller Property	Bolden, Edgar L.	Received
34	Unsigned letter	Bolden, Edgar L.	Received
34a	Duplicate of 34	Bolden, Edgar L.	Received
35	Letter, Carolyn Oakley to Crystle Cowen	Bolden, Edgar L.	Received
36	4/19/05 letter, Maralea Lutino to Engberg	Bolden, Edgar L.	Received
37	2/6/06 letter, Melissa Kuhn to Engberg	Bolden, Edgar L.	Received
38	5/5/06 letter, Nancy Blackledge to Engberg	Bolden, Edgar L.	Received
39	1/3/07 letter, Colleen Daley to Engberg	Bolden, Edgar L.	Received
40	1/29/07 letter, Daley to Engberg	Bolden, Edgar L.	Received
41	5/16/07 letter, Kuhn to Engberg	Bolden, Edgar L.	Received
42	1/16/08 letter, Cowen to Miller & Oakley	Bolden, Edgar L.	Received
43	6/6/02 Notice of Code Enforcement Fee Increase letter, Blackledge to Engberg	Bolden, Edgar L.	Received
44	9/26/07 Enforcement Fee Increase Notification letter	Bolden, Edgar L.	Received
45	6/30/08 Enforcement Fee Increase Notification	Bolden, Edgar L.	Received
46	Mailing List	Hearings Office	Received
47	Hearing Notice	Hearings Office	Received
48	Notice of Rights and Procedures	Hearings Office	Received
49	Request to reschedule	Oakley, Carolyn	Received
50	Rescheduled hearing notice	Hearings Office	Received
51	Duplicate of Exh. 49 rec'd by mail	Oakley, Carolyn	Received