



CITY OF  
**PORTLAND, OREGON**  
HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. LESTER R. FOUST, respondent

CASE NO. 2090026  
[Bureau Case No. 02-116091-HS]

PROPERTY: 5612 SE 50<sup>th</sup> Avenue

LEGAL DESCRIPTION:  
Germania; N ½ of Lot 20, Block 8; Lot 21 & 22 Block 8, 1S2E18CA-01900,  
City of Portland, Multnomah County, Oregon

DATE OF HEARING: May 18, 2009

APPEARANCES:

Respondent did not appear

Ms. Peggy Whelan, representing the City

HEARINGS OFFICER: Mr. Ian Simpson

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Lester R. Foust, the respondent, did not appear at the hearing. David Nilsen appeared and testified under oath or affirmation at the hearing. Mr. Nilsen stated that Mr. Foust died in 1984 and that he was Mr. Foust's grandson. Mr. Nilsen stated that he has lived at the subject property since 1980 and currently lives there. Mr. Nilsen stated that he inherited the property from Mr. Foust, but that he has never recorded this change in ownership with Multnomah County.

The Hearings Officer found that it was appropriate to designate Mr. Nilsen as a limited party in the case and to testify in the hearing, because he lives on the property and may have an ownership interest in it. The Hearings Officer found that since Multnomah County showed Mr. Foust still owning the property (Exhibit 4) and Mr. Nilsen had no documentation that he had any ownership interest in the property, it would not be appropriate to add Mr. Nilsen as a respondent in the case, or replace Mr. Foust with Mr. Nilsen as the case's sole respondent.

The Hearings Officer also found that since the only evidence for Mr. Foust being deceased was Mr. Nilsen's testimony, it was appropriate to continue listing Mr. Foust as the respondent in this case. The Hearings Officer

finds that this Order concerns the subject property, and obligates any current or future owners of the property to comply with its terms. In referring to the respondent in this Order, the Hearings Officer is referring to whoever owns the subject property. The Hearings Officer makes no determination in this Order as to whether Mr. Foust is alive or deceased, or whether the respondent should be changed to another person.

The Hearings Officer found that it was not appropriate to allow Mr. Nilsen to represent Mr. Foust in the hearing. If Mr. Foust was alive and still owned the property, then the record contains no evidence that Mr. Foust wanted Mr. Nilsen to represent him. If Mr. Foust is deceased, then the record contains no evidence as to who currently owns the property. In addition to testifying that he inherited the property, Mr. Nilsen also testified that only he or his mother could have inherited the property. The Hearings Officer finds that Mr. Nilsen's testimony is not sufficient evidence for the Hearings Officer to make a factual determination that Mr. Nilsen owns the property.

Ms. Whelan, Inspector for the Bureau of Development Services, testified under oath or affirmation. Ms. Whelan presented documentation of violations of Title 29 of the Housing Maintenance Code on the subject property. The Hearings Officer finds that the property is located within the City of Portland, and therefore the City has jurisdiction in this case. Exhibits 1 through and including 34 were received into the record without objection.

Ms. Whelan testified that a Notice of Code Enforcement Fee Increase was mailed to the respondent dated June 6, 2002 (Exhibit 28). The City has sent several notices of violation to the subject property since then (Exhibits 15 through and including 28, but with the exception of 26).

Ms. Whelan testified that the subject property has three violations (Exhibit 1a). The first violation is that portions of gutters and/or downspouts are damaged, deteriorated, and/or missing, violating Portland City Code 29.30.030. The second violation is that portions of the garage and accessory structure are in disrepair with missing and/or damaged gutters, missing and/or damaged siding, and deteriorated and/or damaged roof, violating Portland City Code 29.30.020. The third violation is that portions of the exterior siding are deteriorated, damaged and/or missing at the front porch, violating Portland City Code 29.30.060(a).

Mr. Nilsen testified that the house's gutters and downspouts had been replaced in the last month before the May 18 hearing. He stated that work had been done on the garage and accessory structure, but that the siding still needed work. Mr. Nilsen provided no evidence that he has had the City inspect the property to confirm that any violations have been corrected.

Ms. Whelan 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.

Ms. Whelan also requested civil penalties in the following amounts: 13 housing and nuisance inspections at \$94.56 per inspection, totaling \$1229.28. The filing cost of bringing the case to the Hearings Office is \$1215.00. An additional civil penalty of \$5,000.00 is requested, which is based on the seven years the case has been open and the lack of progress in correcting the violations.

Ms. Whelan continued that the property owner must correct all the violations listed in Attachment "A" of the Complaint within 60 days of the effective date of this Order. The penalty for failing to meet this deadline is \$10,000.00.

Ms. Whelan asked that the Hearings Officer retain jurisdiction in the case for one year. The Hearings Officer responded that he saw no good reason, and Ms. Whelan did not provide one, to retain jurisdiction for one year. The Hearings Officer will retain jurisdiction until shortly after the last action can be taken in the case.

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 the only evidence that there has been any work to correct the violations is Mr. Nilsen's testimony that some work has been done within the last month. Given that Mr. Nilsen testified that Mr. Foust died 25 years ago, and that Mr. Nilsen has lived in the house for 29 years, the Hearings Officer finds that the evidence suggests that strong measures are needed to help ensure that the violations are corrected.

The Hearings Officer finds that it is reasonable and appropriate to assess a civil penalty in the amount of \$7,444.28 which is due and payable immediately. This penalty is based on the cost of 13 housing and nuisance inspections, the filing cost of bringing the case to the Hearings Office, and the additional civil penalty reflecting the length of time the case has been open.

One of the Hearings Officer's primary concerns is to have the violations corrected. The Hearings Officer finds that the additional civil penalty of \$10,000.00 the City requests is appropriate to serve as an incentive to the respondent to correct the violations and bring the property into compliance.

The Hearings Officer finds that the testimony and evidence provided by Ms. Whelan and Mr. Nilsen 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.

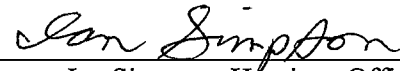
On June 9, 2009, before this Order was issued, the Hearings Office received written confirmation from Ms. Whelan that all, or substantially all, of the violations described in the City's Complaint have been corrected (Exhibit 35). The Hearings Officer receives Exhibit 35 into the record without objections. The Hearings Officer finds that the conditions for canceling the additional civil penalty of \$10,000.00 have been satisfied, and so this penalty is canceled.

#### ORDER AND DETERMINATION:

1. The respondent shall correct the listed violations and have the property inspected and approved by the City of Portland, and shall undertake all actions necessary to prevent reoccurrence.
2. A civil penalty of \$7,444.28 is hereby imposed (comprised of \$1229.28 for 13 housing and nuisance inspections, \$1215.00 for the filing cost of bringing the case to the Hearings Office, and \$5,000.00 to reflect the length of time the case has been open), said penalty to be due and payable immediately and if not paid by 4:30 p.m. on June 23, 2009, shall be made a lien against the subject property on June 24, 2009.
3. The Hearings Officer shall retain jurisdiction in this case until August 28, 2009.
4. This Order has been mailed to the parties on June 9, 2009, and shall become final and effective on June 23, 2009. Any objections to this Order must be in writing and received by the Code Hearings Office before the effective date. This case will be closed on August 31, 2009.

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

Dated: June 9, 2009



Ian Simpson, Hearings Officer

IS:rs/cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint	Whelan, Peggy	Received
1a	Attachment A - List of Violations	Whelan, Peggy	Received
2	Notification List	Whelan, Peggy	Received
3	Photo	Whelan, Peggy	Received
4	Multnomah Assessor Property Information	Whelan, Peggy	Received
5	11/26/02 Photos	Whelan, Peggy	Received
6	6/11/03 Photo	Whelan, Peggy	Received
7	8/18/04 Photos	Whelan, Peggy	Received
8	1/13/05 Photos	Whelan, Peggy	Received
9	4/24/06 Photos	Whelan, Peggy	Received
10	4/22/08 Photos	Whelan, Peggy	Received
11	TRACS printout	Whelan, Peggy	Received
12	TRACS printout	Whelan, Peggy	Received
13	Inspection cards	Whelan, Peggy	Received
14	Case History	Whelan, Peggy	Received
15	5/9/02 Notice of Violation - Property Maintenance Code letter, Edgar Bolden to Foust	Whelan, Peggy	Received
16	11/29/02 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
17	7/25/03 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
18	8/25/04 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
19	2/3/05 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
20	5/8/06 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
21	10/19/06 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
22	10/11/07 Progress Report letter, Whelan to Foust	Whelan, Peggy	Received
23	4/30/08 Progress Report letter, Bolden to Foust	Whelan, Peggy	Received
24	11/6/08 Progress Report letter, Whelan to Foust	Whelan, Peggy	Received
25	11/26/08 Referral of Housing Case to Code Hearings Officer letter, Whelan to Foust	Whelan, Peggy	Received
26	City Lien Report	Whelan, Peggy	Received
27	Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	Whelan, Peggy	Received
28	6/6/02 Notice of Code Enforcement Fee Increase letter, Nancy Blackledge to Foust	Whelan, Peggy	Received
29	9/26/07 Enforcement Fee Increase Notification letter	Whelan, Peggy	Received
30	6/30/08 Enforcement Fee Increase Notification letter	Whelan, Peggy	Received
31	Mailing List	Hearings Office	Received
32	Hearing Notice	Hearings Office	Received
33	Notice of Rights and Procedures	Hearings Office	Received
34	Photos	Nilsen, David	Received
35	Violation correction form	Whelan, Peggy	Received