



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

CITY OF PORTLAND, petitioner, vs. SHARON R. FISHER, respondent

CASE NO. 2120006

[Bureau Case No. 07-121465-HS]

PROPERTY: 5730 SE Carlton Street

LEGAL DESCRIPTION:

Tremont PL, Block 7, Lot 26; 1S2E18DD-14900,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: March 27, 2012

APPEARANCES:

Ms. Sharon Fisher, Respondent

Mr. Mitchell R. McKee, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mitch McKee ("McKee") Senior Inspector for the City of Portland Bureau of Development Services ("City") appeared at the March 27, 2012, hearing and testified on behalf of the City. Ms. Sharon Fisher ("Fisher") appeared at the hearing and testified on her own behalf. The Hearings Officer makes this decision based upon the testimony of McKee and Fisher and the documents admitted into the evidentiary record (Exhibits 1 through and including 36).

Fisher stipulated that all of the violations alleged by the City, on Exhibit 1a, exist at the real property commonly referred to as 5730 SE Carlton Street, Portland, Oregon (the "Subject Property"). Fisher testified that has been unemployed for at least three years and is unable to adequately maintain the Subject Property. Fisher stated she has no money to pay for any repairs and/or maintenance at the Subject Property. Fisher stated that she had no objection to the Hearings Officer granting the City's requested relief (per Exhibit 1, paragraph 3).

McKee, at the hearing, briefly reviewed Exhibits submitted by the City (Exhibits 1 through and including 33). McKee stated that the current condition of the residence located on the Subject Property creates serious fire, life, safety, health and sanitation risks to occupants, visitors and neighbors of the Subject Property. McKee stated that

the residence at the Subject Property has been in a state of "constant dereliction" and vacated for more than 3 years. McKee stated that the City has conducted 5 inspections of the Subject Property at a cost of \$146 per inspection. McKee stated that the City incurred a \$1,215 expense in bringing this case before the Hearings Officer. McKee stated that a requested "additional civil penalty" request for \$2,000 (Exhibit 1 paragraph 3[B]) is withdrawn. McKee requested that the Hearings Officer order that any expenses associated with maintaining the "secure vacation" of the residence and the demolition of the residence be assessed as civil penalty liens against the Subject Property.

The Hearings Officer finds, based upon the testimony of McKee and Fisher, and a review of the photographs (Exhibits 6 through and including 18) that the residence at the Subject Property is in such condition as to create serious fire, life, safety, health and sanitation risks to occupants, visitors and neighbors of the Subject Property. The Hearings Officer finds that correction of the violations (Exhibit 1a) at the residence on the Subject Property is not financially feasible. The Hearings Officer finds that it is necessary to order the residence be demolished. The Hearings Officer finds that until the residence is demolished it must remain vacated.

The Hearings Officer finds that the City is entitled to recover costs incurred in conducting five inspections of the Subject Property and also to recover the cost in bringing this case before the Hearings Officer. The Hearings Officer finds it reasonable and appropriate to assess one or more civil penalties related to vacating and demolishing the residence, which if not paid, will be filed as one or more liens against the Subject Property.

ORDER AND DETERMINATION:

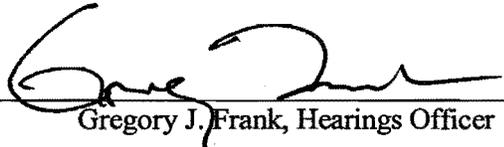
1. Respondent shall correct violations set forth on Exhibit 1a.
2. A civil penalty in the amount of \$1,945.00, as reimbursement of City expenses incurred, is imposed and said civil penalty shall be payable by April 23, 2012, and if not paid shall be made a lien against the Property on April 24, 2012.
3. In the event all violations set forth on Exhibit 1a are not corrected by April 23, 2012, then the City shall be authorized to demolish all structures located on the Subject Property.
4. In the event all violations set forth on Exhibit 1a are not immediately corrected, the City shall be authorized to vacate the Subject Property and complete a security board-up of all windows, doors and points of access to restrict entry. The Subject Property shall remain vacated and secured so as to prevent unauthorized entry until all violations (Exhibit 1a) are corrected. During any period of vacation access to the Subject Property may be granted, at the sole discretion of the City, only by written approval by the City. If, during vacation of the Subject Property as directed by this paragraph, the City confirms unauthorized entry, the City shall be authorized to summarily board-up and secure the Subject Property; summary board-up of the Subject Property is authorized, without further notice to Respondent or any other person/entity and without the need to obtain an administrative search warrant, under PCC 29.60.070.
5. In the event that the City demolishes one or more structures located on the Subject Property an additional civil penalty shall be assessed for the cost incurred in the demolition to include, but are not limited to fines, fees, administrative costs, recorders fees, title company charges, City Auditor charges and a 10% overhead charge. The City is authorized to initiate measures, as necessary, to collect any and all funds due to the City, including initiating a legal action in a court of competent jurisdiction. Prior to the assessment of any civil penalty, under this paragraph, the City shall submit to the Hearings Officer for review and approval, an itemized statement of costs.

6. In the event that any structure on the Subject Property is reoccupied and the City vacates the Subject Property, the City shall be entitled to an award of one or more civil penalties in amount(s) sufficient to recover City costs associated with boarding-up and securing the Subject Property, removal of accumulated trash and debris external to the structures on the Subject Property, conducting inspections and/or site visits by City personnel (at the rate of \$145/hour). Prior to the assessment of any civil penalty, under this paragraph, the City shall submit to the Hearings Officer for review and approval, an itemized statement of costs.
7. If the Property is vacated pursuant to paragraph 4 above, the City shall have the right to recover all costs associated with securing (board-up) of the Subject Property and relocating tenants. The City shall be required to follow PCC 22.06.010 and ORS 90.450.
8. The Hearings Officer shall retain jurisdiction over this case until September 28, 2012, and unless a motion is filed by the City or Respondent to extend the Hearings Officer's jurisdiction (prior to September 28, 2012), the case shall be closed on October 1, 2012.
9. This Order has been mailed to the parties on March 27, 2012, and shall become final and effective on April 10, 2012. 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: March 27, 2012

GJF:rs

Enclosure



Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint	McKee, Mitch	Received
1a	Attachment A - List of Violations	McKee, Mitch	Received
2	3/6/12 Memo from McKee	McKee, Mitch	Received
3	Notification List	McKee, Mitch	Received
4	Photo	McKee, Mitch	Received
5	Multnomah Assessor Property Information	McKee, Mitch	Received
6	4/25/07 Photos	McKee, Mitch	Received
7	5/16/07 Photos	McKee, Mitch	Received
8	6/13/07 Photos	McKee, Mitch	Received
9	10/29/07 Photos	McKee, Mitch	Received
10	4/25/08 Photos	McKee, Mitch	Received
11	5/16/08 Photos	McKee, Mitch	Received
12	11/4/08 Photos	McKee, Mitch	Received
13	3/5/09 Photo	McKee, Mitch	Received
14	6/1/09 Photos	McKee, Mitch	Received
15	7/8/09 Photos	McKee, Mitch	Received
16	7/22/09 Photos	McKee, Mitch	Received
17	1/13/11 Photos	McKee, Mitch	Received
18	7/14/11 Photos	McKee, Mitch	Received
19	TRACS printout	McKee, Mitch	Received
20	TRACS printout	McKee, Mitch	Received
21	Case History	McKee, Mitch	Received
22	4/27/07 Notice of Violation-Property Maintenance Code letter, Peggy Whelan to Fisher	McKee, Mitch	Received
23	11/8/07 Progress Report letter, Whelan to Fisher	McKee, Mitch	Received
24	4/30/08 Progress Report letter, Victor Unkow to Fisher	McKee, Mitch	Received
25	11/6/08 Additional Violations letter, Whelan to Fisher	McKee, Mitch	Received
26	11/26/08 Referral of Housing Case to Code Hearings Officer letter, Whelan to Fisher	McKee, Mitch	Received
27	3/6/09 Progress Report letter, Whelan to Fisher	McKee, Mitch	Received
28	6/8/09 Additional Violations letter, Whelan to Fisher	McKee, Mitch	Received
29	2/2/12 Notice of Possible Code Hearing	McKee, Mitch	Received
30	7/14/09 Hearings Officer's Supplemental Order	McKee, Mitch	Received
31	Letter, Fisher to Peggy/City of Portland	McKee, Mitch	Received
32	City Lien Report	McKee, Mitch	Received
33	5/30/07 Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	McKee, Mitch	Received
34	Mailing List	Hearings Office	Received
35	Hearing Notice	Hearings Office	Received
36	Notice of Rights and Procedures	Hearings Office	Received