

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. CHRIS H. GRAVES, respondent

CASE NO. 2120018

[Bureau Case No. 11-180748-HS]

PROPERTY: 1310 N Buffalo Street

LEGAL DESCRIPTION:

Good Morning Add, Block 14, Lot 14-16; 1N1E15BB-08700,
City of Portland, Multnomah County, Oregon

DATE OF HEARING: June 12, 2012

APPEARANCES:

Respondent did not appear

Mr. Mitch McKee, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Mitch McKee ("McKee"), Senior Housing Inspector for the City of Portland Bureau of Development Services, appeared and testified on behalf of the City. Mr. Skiff Larson ("Larson") appeared representing the interests of Bank of America. Mr. Chris Graves ("Graves"), Respondent, did not appear at the hearing. Testimony was received during the hearing that Mr. Graves is deceased. No one appeared at the hearing on behalf of Mr. Graves' estate. The Hearings Office mailed a Notice of Hearing to Graves at an address on N. Montana and the Subject Property. Both mailings were returned by the US Postal Service indicating that the properties were both vacant.

McKee requested the Hearings Officer admit all of the exhibits into the evidentiary record. The Hearings Officer found all of the submitted exhibits to be relevant to this case. Exhibits 1 through and including 26 were admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of McKee and Larson and the admitted documents (Exhibits 1 through and including 26).

The City submitted a Complaint alleging that specified violations of the Portland City Code ("PCC") exist at 1310 N Buffalo Street, Portland, Oregon ("Subject Property") (Exhibit 1, including Attachment A). The violations, as summarized by the Hearings Officer, are as follows (violation numbers correspond to Exhibit 1, Attachment A):

1. **Health Sanitation Violation:** trash/debris on exterior of property; and
2. Several windows are in disrepair by being boarded; and
3. Portions of gutters and/or downspouts are clogged with debris; and
4. Property is a derelict building as defined by Code; and
5. Front exterior door is boarded; and
6. Portions of gutters and/or downspouts are damaged, deteriorated and/or missing; and
7. Window panes throughout are broken and/or missing; and
8. **Health Sanitation Violation:** trash/debris on interior of dwelling; and
9. **Health Sanitation Violation:** excessive mold growth on walls; and
10. **Fire Life Safety Violation:** electrical service panel is damaged and broken; and
11. Portions of wall and ceiling coverings are damaged and missing; and
12. Lavatory basin is damaged and torn from the wall.

McKee testified that photos were taken of the property in September 2011 and numerous violations existed at that time. McKee that on December 21, 2011, the property was boarded up by the City and additional photos were taken. McKee testified that he visited the property in April and May 2012 and took additional photos. McKee indicated that he was unable to confirm the existence of violation #3 when he was at the Subject Property and as a result he would like to withdraw that violation. McKee testified that while the City's case has only been open for 10 months, the Subject property has been a longstanding problem, requiring police response on numerous occasions. McKee testified that the property has been vacant for approximately 4 years, and the property owner has been deceased for 3 years. McKee testified that since 1996 there have been almost 20 cases related to the Subject Property, including a report in 2000 that the property was being used to manufacture illegal drugs. McKee testified that until the last few weeks, the bank was not involved in maintaining the home, though the bank has now expressed an interest in maintaining the home.

Larson testified on behalf of Bank of America. Larson testified that he is an employee of Routh Crabtree Olsen, P.C. and that that the company is representing Bank of America in its foreclosure action against the Estate of Mr. Graves related to the Subject Property. Larson testified that the property is scheduled for a foreclosure sale on July 11, 2012. Larson testified that if the property is not sold, he believes that the bank can have the code violations on the property corrected by August 11, 2012.

McKee indicated that he and Larson had agreed to modify some of the relief requested in Exhibit 1. McKee requested that the Hearings Officer order Bank of America to correct all of the violations listed on Exhibit 1, Attachment A by August 11, 2012 (a date certain). McKee requested that the Hearings Officer order that the Subject Property be immediately vacated, and that vacation is maintained through a security board-up of the Subject Property. McKee requested that the Hearings Officer order Bank of America to maintain the secure status of the Subject Property and also maintain the yard and exterior of the home according to the requirements in the PCC. In the event that the security board-up is not properly maintained and/or the yard and exterior are not properly maintained, McKee requested that the City be permitted to abate any issues and that the Hearings Officer assess a one-time \$5000 civil penalty on Bank of America. In the event that the security board-up is not properly maintained and/or the yard and exterior are not properly maintained on a second occasion, McKee requested that the Hearings Officer order the Subject Property be demolished. In the event that all violations listed in Exhibit 1, Attachment A are not corrected by August 11, 2012, McKee asked that the Hearings Officer order that all structures on the Subject Property be demolished. McKee asked that in the event the City vacates and/or demolishes the Subject Property, the City have the right to seek recovery of all costs related to the vacation and/or demolition process. McKee also requested that the Hearings Officer assess civil penalties in an amount sufficient to reimburse the City for costs extended thus far, including \$1,606.00 for inspection services, \$1,215.00 for the

cost of taking this case to hearing, and \$55.00 for the cost of a title report. The total civil penalties amount to \$2,876.00.

McKee submitted documentation showing that the City has filed liens against the Subject Property of approximately \$26,000.00 (see Exhibits 20 and 21).

No one appeared on behalf of the Estate of Mr. Graves.

Chapter 29 of the PCC lists the Housing Maintenance Requirements placed on owners of property located within the City of Portland. PCC 29.30.005 provides, "A. An owner may not maintain or permit to be maintained, in violation of this Chapter, any residential property. B. All residential property shall be maintained to the building, mechanical, plumbing and electrical code requirements in effect at the time of construction, alteration, or repair."

The Hearings Officer finds, in a Housing compliance case, that she has the authority to order compliance, abatement, and repairs at real property located within the City of Portland (PCC 22.05.010). The Hearings Officer finds that this is a Housing compliance case and the Subject Property is located within the City of Portland. The Hearings Officer finds, in a Housing compliance case, that she has the authority to order a structure vacated and/or demolished if it appears to the Hearings Officer that such measure is reasonably required to protect the health, safety, or property of the general public, residents of the structure, or that of adjacent landowners and residents (PCC 22.050.101). The Hearings Officer finds, in a Housing compliance case, that she has the authority to assess civil penalties if violations are found to exist (PCC 22.06.010).

The Hearings Officer finds, based upon the evidence in the record, that the alleged violations (1, 2, and 4 through, and including, 12) exist at the Subject Property. The Hearings Officer finds that numerous violations create health and sanitation risks to the occupant(s) and neighboring properties. The Hearings Officer finds that one violation creates a serious fire, life and safety risks to the occupant(s) and neighboring properties.

The Hearings Officer finds, based upon the evidence in the record, that the property is in foreclosure and scheduled to be sold on July 11, 2012. The Hearings Officer finds that significant liens against the property exist. The Hearings Officer finds that correction of the existing violations will require additional financial expenditures, and that the likelihood of correction of the violations is low based on the length of time the property has been vacant and unattended without response from the Respondent or Bank of America and based on the degraded condition of the Subject Property.

The Hearings Officer finds that it is appropriate to order the following: The Hearings Officer orders all structures at the Subject Property shall be vacated by the City immediately. The Hearings Officer orders all code violations on the property be corrected by August 11, 2012. The Hearings Officer orders that unless all violations are corrected by August 11, 2012, all structures at the Subject Property shall be demolished. The Hearings Officer orders that between the date of the Hearing and July 11, 2012, the security board-up, yard and exterior of the property shall be maintain in accordance with the PCC by Bank of America. In the event that the Subject Property is not sold on July 11, 2012, the Hearings Officer orders that Bank of America maintain the security board-up, yard and exterior of the Subject Property between July 11, 2012 and August 11, 2012. The Hearings Officer orders the assessment of a one-time \$5,000.00 civil penalty should Bank of America not maintain the security board-up, yard and exterior of the property in accordance with the PCC. The Hearings Officer orders that all structures on the Subject Property be demolished should Bank of America not maintain the security board-up, yard and exterior of the property on a second occasion.

The Hearings Officer finds that it is reasonable to assess the amount of \$2,876.00 (\$1,606.00 for inspection services, \$1,215.00 for the cost of taking this case to hearing, and \$55.00 for a title report.) The Hearings Officer finds it reasonable and appropriate to retain jurisdiction in this case for 180 days, and grants the Bureau of Development Services leave to request an extension of jurisdiction, if necessary.

ORDER AND DETERMINATION:

1. Respondent shall correct all violations listed on Exhibit 1, Attachment A and undertake all actions necessary and appropriate to prevent reoccurrence; and
2. The property shall be vacated immediately, and a security board-up installed. The Subject Property shall remain vacated and secured so as to prevent unauthorized entry until all violations (Exhibit 1, Attachment A) are corrected. During any period of vacation, the City grants access to the Subject Property to Bank of America authorized agents for purposes of maintaining the security of the property, and the yard and exterior of the property in accordance with the PCC.
3. The Hearings Officer orders that between the date of the Hearing and July 11, 2012, the security board-up, yard and exterior of the property shall be maintain in accordance with the PCC by Bank of America.
4. In the event that the Subject Property is not sold on July 11, 2012, the Hearings Officer orders that Bank of America continue to maintain the security board-up, yard and exterior of the Subject Property between July 11, 2012 and August 11, 2012.
5. In the event that the security board-up, yard and exterior of the property are not maintained in accordance with the PCC, the Hearings Officer orders the assessment of a one-time \$5,000.00 civil penalty against Bank of America.
6. In the event that the security board-up, yard and exterior of the property are not maintained in accordance with the PCC on a second occasion between the date of the Hearing and August 11, 2012, the Hearings Officer orders that all structures on the Subject Property be demolished.
7. In the event that any structure on the Subject Property is reoccupied, or the exterior of the property is not maintain in accordance with the PCC, and the City must abate an issue arising on the Subject Property, the City shall be entitled to an award of a one-time civil penalty in the amount of \$5,000.00 to cover 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. 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.
8. In the event that any structure on the Subject Property is reoccupied, or the exterior of the property is not maintained in accordance with the PCC for a second time prior to August 11, 2012, and the City must abate an issue arising on the Subject Property, the Hearings Officer orders that all structures on the Subject Property be demolished.
9. In the event that all violations are not corrected by August 11, 2012, the Hearings Officer orders that all structures on the Subject Property be demolished.
10. 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.

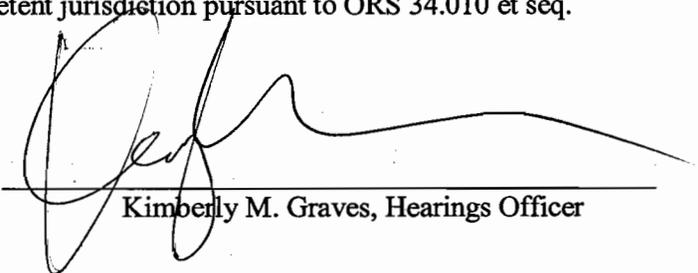
Prior to the assessment of any civil penalty, under this paragraph, the City shall submit to the Hearings Officer for review and approval, an itemized statement of costs.

11. A civil penalty in the amount of \$2,876.00 (\$1,606.00 for inspection services, \$1,215.00 for the cost of taking this case to hearing, and \$55.00 for a title report) is imposed and said penalty shall be payable by July 9, 2012, and if not paid, shall be made a lien against the Subject Property on July 10, 2012.
12. The Hearings Officer retains jurisdiction over this case until January 2, 2013, and unless a motion is filed by the City or Respondents to extend the Hearings Officer's jurisdiction, the case shall be closed on January 3, 2013.
13. This order has been mailed to the parties on June 22, 2012, and shall become final and effective on July 6, 2012. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
14. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 22, 2012

KMG:cl

Enclosure



Kimberly M. Graves, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Complaint	McKee, Mitch	Received
2	Notification List	McKee, Mitch	Received
3	Photo	McKee, Mitch	Received
4	Multnomah Assessor Property Information	McKee, Mitch	Received
5	9/29/11 Photos	McKee, Mitch	Received
6	12/21/11 Photos	McKee, Mitch	Received
7	4/23/12 Photos	McKee, Mitch	Received
8	5/9/12 Photos	McKee, Mitch	Received
9	TRACS printout	McKee, Mitch	Received
10	TRACS printout	McKee, Mitch	Received
11	Case History	McKee, Mitch	Received
12	9/30/11 Notice of Violation-Property Maintenance Code letter, Tim Morris to Graves	McKee, Mitch	Received
13	12/22/11 Additional Violations letter, McKee to Graves	McKee, Mitch	Received
14	2/7/12 Notice of Possible Code Hearing	McKee, Mitch	Received
15	Affidavit for Administrative Search Warrant for Residential Premises	McKee, Mitch	Received
16	Administrative Search Warrant for Residential Premises	McKee, Mitch	Received
17	Return of Search Warrant	McKee, Mitch	Received
18	2/6/12 Lien and Encumbrance Report	McKee, Mitch	Received
19	E-mails	McKee, Mitch	Received
20	City Lien Report	McKee, Mitch	Received
21	City Lien Report	McKee, Mitch	Received
22	Mailing List	Hearings Office	Received
23	Hearing Notice	Hearings Office	Received
24	Notice of Rights and Procedures	Hearings Office	Received
25	6/5/12 Returned Mail Memo	Hearings Office	Received
26	6/11/12 Photos	McKee, Mitch	Received