



# Portland City Auditor

## Hearings Office

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### DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

#### I. GENERAL INFORMATION

**File Number:** LU 16-155589 CU (Hearings Office 4160020)

**Applicant:** Lill H. Madland  
533 NE Brazee Street  
Portland, OR 97212-3820

**Appellant:** Beaumont-Wilshire Neighborhood Association  
2000 NE 42nd Avenue, Suite D#394  
Portland, OR 97213-1397

**Appellant's Representative:** Jack Bookwalter  
Beaumont-Wilshire Neighborhood Association  
2000 NE 42nd Avenue, Suite 0#394  
Portland, OR 97213-1397

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services ("BOS") Staff Representative:** Kathleen Stokes

**Site Address:** 4440 NE 35<sup>th</sup> Avenue

**Legal Description:** BLOCK 3 LOT 1-4, WILLAMETTE ADD

**Tax Account Number:** R912500840

**State ID Number:** 1N1E24DB 06300

**Quarter Section:** 2634

**Neighborhood:** Beaumont-Wilshire

**District Neighborhood Coalition:** Central Northeast Neighbors

**Zoning:** R5h, Residential 5,000, High Density Single-Dwelling, with an Aircraft Landing (height) Overlay

**Land Use Review:** Type II, Conditional Use

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:01 a.m. on November 16, 2016, in the third floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:20 a.m. The record was closed at that time.

**Testified at the Hearing:**

Kathleen Stokes  
Jack Bookwalter  
Tim Hemstreet  
Lill Madland  
Frazier Raymond, Jr.  
Dylan Shore

**II. ANALYSIS**

**OVERVIEW**

On or about April 19, 2016, Lill Madland ("Applicant") requested BOS approval (Exhibit A.1, including subparts - hereafter the "Application") for a Type B accessory short term rental ("ASTR") at 4440 NE 35<sup>th</sup> Avenue, Portland, Oregon (the "Subject Property"). On or about October 3, 2016, the City of Portland BDS issued a Type II land use decision (Exhibit H.17 - hereafter the "Admin Decision") related to the Application. The Admin Decision approved, with conditions, a Type B ASTR for the Subject Property. The Beaumont-Wilshire Neighborhood Association ("BWNA") appealed, to the City of Portland Hearings Officer ("Hearings Officer"), the validity of the Admin Decision (Exhibit H.1, including subparts - hereafter the "Appeal Letter").

The Hearings Officer finds the Appeal Letter raised two issues. First, BWNA asserted that the Admin Decision incorrectly applied the "neighborhood livability impact" approval criterion as set forth in Portland City Code ("City Code") section 33.815.105 C. Second, BWNA asserted that Applicant's proposal was not in conformance with "eligibility requirements specified in the City's accessory short-term rental ordinance found in Chapter 33.207."

The Hearings Officer will address, in the "Eligibility Issue" section below, BWNA's assertion that Applicant's proposal does not meet the eligibility requirements of City Code 33.207. The Hearings Officer will address BWNA's livability issue in the findings for 33.815.IOSC.

## ELIGIBILITY ISSUE

### Hearings Officer's summary of BWNA arguments related to the Eligibility Issue

BWNA stated, in the Appeal Letter, that

"What it comes down to is that the applicant's proposal - apparently now with the concurrence of Bureau of Development Services (BOS) staff - will allow a residential property owner to develop a short-term rental at a property where they do not reside. This arrangement is contrary to the description of an accessory short-term rental found in the ordinance."

and

"off-premises short-term rental by a non-resident owner who lives elsewhere" is "an arrangement not permissible under the ordinance."

BWNA provided a thorough review, in the Appeal Letter and testimony at the November 16, 2016 public hearing (the "Hearing"), of sections of the City Code BWNA felt were relevant to this case. BWNA's review focused on City Code 33.207.020A and 33.207.0SOB.2.

City Code 33.207.020A states the following:

"An accessory short-term rental is where an individual or family resides in a dwelling and rents bedrooms to overnight guests for fewer than 30 consecutive days."

BWNA's interpretation of City Code 33.207.020A is that *only* the resident at a dwelling unit may offer to rent, on a short-term basis, rooms to overnight guests (emphasis added by the Hearings Officer). BWNA's interpretation of 33.207.020A precludes a non-resident owner of a property from renting rooms, on a short-term basis, to overnight guests.

City Code 33.207.0SOB.2 states the following:

"Accessory dwelling units. On sites with an accessory dwelling unit, the resident can live in the primary or accessory dwelling unit and rent bedrooms in either dwelling unit."

**BWNA** interprets this section of the City Code to require the resident to be *the* individual or entity who rents rooms, on a short-term basis, to overnight guests (emphasis added by the Hearings Officer). BWNA's interpretation of City Code 33.207.0SOB.2 precludes a non-resident owner from renting rooms, on a short-term basis, to overnight guests.

BWNA reviewed the application and supporting materials in this case and concluded that while Applicant's son, the resident at the ADU on the Subject Property, did provide some services

related to the short-term rentals, it was the Applicant who applied in her name for the ASTR permit and she was the person conducting the rental of the rooms.

BWNA, in a September 13, 2016 letter ("9/13 BWNA Letter") to the BDS staff planner (attached to Appeal Letter), provided additional argument in support of its' position. BWNA cited the definition of resident (hereafter, the term "Resident" shall refer to the person/entity defined in City Code 33.207B.1) which states the following:

"Resident. The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter."

BWNA, in the 9/13 BWNA Letter, provided the following comments:

"This provision was added to allow renters as well as resident owners to rent out part of their dwelling (e.g. think of a renter renting out 2 bedrooms in their 4 bedroom rental house). The resident in the case in question does not live in the dwelling unit that is being rented out. There is a separate residence on the premises in the form of an ADU that is rented separately by the off-site owner. The property owner is not a resident of the property and does not take part in the Household Living use on the site. The ordinance is intended to allow short-term rental by residents that reside at the property. In the case in question, the resident of the property is not engaging in short-term rental activity, the off-site, non-resident owner is."

BWNA, in the 9/13 BWNA Letter, also referred to City Code 33.207.050 A.1. City Code 33.207.0SOA.1 states:

"Accessory Use. A Type B accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .050.B.2 or .050.B.3, the bedrooms rented to guests must be within the dwelling unit that the resident occupies."

BWNA provided, in the 9/13 BWNA Letter, the following comments:

"This provision, with the requirement that the residents renting bedrooms are themselves residents of the property, was added to ensure that residents engaging in short-term rentals are themselves engaged in the Household Living use on the site. This is intended to provide some assurance that the residents have a vested interest in the character and behavior of the guests to which they are renting, which can help minimize potential adverse impacts on neighbors and ensure compatibility with the residential zoning of the property. The proposal does not meet this requirement since the owner renting rooms is off-site and is not themselves engaged in Household Living on the site. Thus, the

proposed short-term rental use is not accessory to a Household Living use on the site."

**BWNA**, in the 9/13 **BWNA** Letter, referred to City Code 33.207.050 A.3. City Code 33.207.050A.3 states:

"A Type B accessory short-term rental is allowed in all residential structure types when accessory to a Household Living Use."

BWNA then stated in the 9/13 BWNA Letter, the following:

"This provision was added to insure that accessory rentals would in fact be accessory. In the subject proposal, there is no way that a two-story four-bedroom house can be considered accessory to a separate one-room ADU."

### **Hearings Officer's summary of BDS arguments related to the Eligibility Issue**

BDS, in Admin Decision, Exhibit H.5 (a PowerPoint presentation), and during BDS staff testimony at the Hearing, presented evidence that the Application did meet the requirements of City Code 33.207 and 33.815. BDS staff also submitted, at the Hearing, letters received by BDS staff from Applicant (Exhibits H.8, H.9, and H.10), excerpts and commentary related to City legislative hearings and work sessions prior to the adoption of City Code 33.207 (Exhibits H.6, H.11, H.12, H.13, H.14, and H.15) and a copy of the ordinance creating City Code 33.207 (Exhibit H.16).

BDS, in Exhibit H.17 and Hearing testimony, stated that City Code 33.207.050 A.1 requires a person to reside on the Subject Property for at least 270 days each calendar year. BDS testified that Applicant's son (the "Son") would occupy the accessory dwelling unit ("ADU") on the Subject Property under the terms of a long-term lease (see Exhibits A.1, A.9, H.8, H.9, H.17, and H.5). BDS stated that the Son's occupancy of the ADU at the Subject Property met the requirements of City Code 33.207.020 A and B.1 and 33.207.0506.2. BDS stated, at the Hearing, that Applicant and Son "co-manage" the ASTR at the Subject Property (Exhibit H.5).

BDS submitted documents, into the evidentiary record, related to the passage/enactment, by the Portland City Council, of City Code 33.207 (Exhibits H.6, H.11, H.12, H.13, H.14, H.15, and H.16). Exhibit H.6 is a copy of a submission, by the City of Portland Bureau of Planning and Sustainability ("Planning") to the City Council. Exhibit H.6 contains proposed code language and commentary, by Planning, in July of 2014, for City Code 33.207. Exhibit H.12 includes portions of April 22, 2014, Planning meeting minutes related to the prospective regulation of short-term rentals by the City. Exhibit H.11 is a summary memorandum prepared by a BDS planner titled, *"What was the impetus for requiring short-term rentals to be accessory to a household use? Why do we need a resident? Why is a resident required?"* Exhibits H.13 and H.15 are transcripts (unofficial) of portions of the June 4, 2016, and July 2, 2016, City Council public hearings. Exhibit H.14 is a transcript (unofficial) of a June 24, 2016, City Council work session (the "Work

Session"). Exhibits H.13, H.14, and H.15 include public testimony and/or City Council member comments related to the prospective City Code 33.207.

BDS highlighted various sections/portions of Exhibits H.6, H.11, H.13, H.14, and H.15.

### **Hearings Officer's Eligibility Findings**

The Hearings Officer considered arguments and evidence presented by BDS, BWNA, the Applicant and Son, the language of City Code 33.207, and the legislative history provided by BDS in making this decision. The Hearings Officer believes the primary issue raised by BWNA, the eligibility issue, can be stated as follows: Does City Code 33.207 require ASTR rooms be rented by the Resident of an ASTR property?

City Code 33.207.020 A defines an accessory short-term rental to exist when "an individual or family resides in a dwelling unit and rents bedrooms to overnight guests..." BWNA's interpretation of City Code 33.307.020 A is that the phrase "individual or family resides" is immediately followed by the term "rents." BWNA argues the grant of authority to rent an ASTR is inextricably connected to the Resident. BWNA asserts that a plain reading of the code requires the Resident to rent out ASTR rooms; not a non-Resident owner. BWNA acknowledges that either an owner of a site or a long-term renter at the site may be a Resident.

BDS submitted a number of documents into the evidentiary record related to the legislative history of City Code 33.207 (Exhibits H.6, H.11, H.13, H.14, and H.15). Exhibit H.6 includes a summary of City Code amendments. Planning stated, in Exhibit H.6 (page 9) the following:

"The amendments create a new Accessory Short-Term Rental permit that will allow a resident to rent one to two bedrooms in their house, attached house, duplex, manufactured home or accessory dwelling unit to overnight guests."

BDS argued that BWNA's interpretation of City Code 33.207, with regard to who may rent out an ASTR, is not correct. BDS argued that the City Code 33.207 phrases "an individual or family resides" and the "rents bedrooms" are independent of one another. BDS argued that its argument is supported by clear language in City Code 33.207 itself and also the legislative history of 33.207.

The Hearings Officer finds City Code 33.207, specifically City Code 33.207.020A, is subject to more than one interpretation. The Hearings Officer finds both BWNA's and BDS' interpretations of City Code 33.207 are plausible.

Oregon courts have set forth a methodology for decision makers, such as judges and hearings officers, to interpret legislation. *PGE v. Bureau of Labor and Industries*, 317 Or 606,859 P2d 1143 (1993), *State of Oregon v. Gaines*, 346 Or 160, 206 P3d 1042 (2008). The Hearings Officer will refer to this methodology as the "*PGE v. BOLI* Template."

The first step, in the *PGE v. BOLI* Template, is to examine the "text and context" of the disputed sections of the code. *Id.* At 610. Legislative history of the code language may be considered by a decision maker if the analysis of text and context do not provide a clear interpretation of the disputed section of code. *Id.* at 611. The final step, in the *PGE v. BOLI* Template, if necessary, is to have the decision maker "resort to general maxims of statutory construction." *Id.* at 612.

As noted above, the text of City Code 33.207.020A is capable of being interpreted as proffered by both BWNA and BDS. Therefore, the Hearings Officer next looks at the "context."

In a "context" review, for a land use case, the Hearings Officer typically considers the "Purpose" section. The Hearings Officer takes note that City Code 33.207.010 (the Purpose section for 33.207) states, in part, that one purpose of the ASTR standards is to ensure "that the primary use remains residential..." As will be noted during the legislative history discussion below, a very important purpose of 33.207 is to make sure that long-term housing opportunities are not lost to short-term rentals.

The Hearings Officer also considered, as part of the "context" review, City Code sections 33.207.020 B. 33.207.020 B.2 provides specific definitions of Resident and "operator" that apply throughout City Code 33.207. The definitions of Resident and "operator," as set forth in City Code 33.207.020 B.2, are as follows:

- "1. Resident. The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter."
2. Operator. The resident or a person or entity that is designated by the resident to manage the accessory short-term rental."

The Hearings Officer finds, under City Code 33.207, to be a Resident the person need only be the person(s) who lives in the dwelling unit. City Code 33.207.020 B.1 allows a Resident to be either the owner of the property or a long-term renter. The Hearings Officer finds the City Code 33.207.020 B.2 definition of "operator" may be either the Resident or another person or entity "designated by the resident to manage" rooms rented as short-term rentals. The Hearings Officer also, during the "context" review, considered City Code 33.207.050 A.1 which, in part, states the following:

"A Type B accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year..."

The Hearings Officer finds City Code 33.207.050A ensures that the primary use of a site remains residential.

The Hearings Officer finds the "context" review indicates a primary purpose of 33.207 is to ensure continued use of a site as residential (City Code 33.207.010, 33.207.020 A., 33.207.020 B.1, 33.207.050 A.1, and 33.207.050 B.2). The Hearings Officer finds, as part of the "context

review, "Resident" and "operator" are defined terms and that a Resident and "operator" are not required to be the same person/entity. The Hearings Officer finds the "context" review does not clearly support either the BWNA or BDS argument related to the existence, or lack thereof, of a requirement that the Resident (owner residing at the site or a long-term renter at the site) rent rooms at a short-term rental property regulated by City Code 33.207.

The Hearings Officer, at this point, takes note of ORS 174.020. While this section of the Oregon statutes is directed towards an appellate court's review of Oregon statutes, its logic and principles are equally applicable to local land use decisions. ORS 174.020 states, in relevant part, that:

"In the construction of a statute, a court shall pursue the intention of the legislature if possible."

The Hearings Officer finds the legislative history documents (Exhibits H.6, H.11, H.13, H.14, and H.15) submitted by BDS are relevant to the Hearings Officer's determination of the Portland City Council's intent in enacting City Code 33.207.

BDS requested that the Hearings Officer consider excerpts of the legislative history related to "who can be the operator or manager" of an ASTR. BDS highlighted and annotated various sections of Exhibits H.6, H.11, H.13, H.14, and H.15. One such highlighted section is found in Exhibit H.15 (closed captioned transcript of a July 2, 2014 City Council hearing- hereafter the "7/2/14 Council Hearing" ). BDS highlighted a portion of testimony by Planning employee Sandra Wood ("Wood") (page 31, Exhibit H.15). In that highlighted section, Wood stated the following:

"At the work session, we talked about who can operate the short-term rental, and the idea here is that you could move to allow that the resident's designee operate the short-term rental. They could operate it, they could hire a neighbor to operate it, their family member could operate it, or hire a property management company or someone else to operate it. So, that is a potential for a motion. Of course, you could also not amend the Planning and Sustainability's recommendation, which was that the resident is the operator."

Wood, in the quote above, references a June 24, 2014 Work Session. BDS provided a partial transcript of the Work Session (Exhibit H.14). Wood, Mayor Hales, Commissioner Fritz, and Commissioner Fish, at the Work Session, had the following interchange:

"37:50 Fritz: So the other example that I found compelling was the lady in Ladd's Addition who was the operator on behalf of her mother who lives on the site within the ADU and that seemed to me in the spirit of what's being proposed. So is there a way to allow that?"



Sandra Wood: So that's issue #5 on our sheet which is, can a non-resident be the operator? The Planning Commission's recommendation defined the operator as the resident. In our discussion of that, we thought, well, of course family members or neighbors can come over and help their, you know, their mother-in-law, but the operator in the application form shows that the resident is the person who is applying for the permit, is cognizant, and is in essence, the operator. And whether their daughter or someone is managing their website, we -- that's fine. The question that came up in some of the subsequent testimony by some of the property management groups was, okay, can you be a resident in your house and hire out all of the operation? The website management, the cleaning, the washing the sheets, the meeting people at the door with a key to the unit in the back, um, is that okay? And so that's the question before you is: Should they be able to designate anybody else to operate the short-term rental on your behalf?

Fish: Why not?

Fritz: It seems to me that the important part is the residence - being the primary residence for someone, and then whether they are running their website, their daughter is running their website, or some third party is running the website, I don't really care.

Fish: By allowing the designee, it seems to me like we could be spawning a whole nether set of small business opportunities of people to do it, and actually have a higher set of professional standards. Why not?

Hales: Yeah, that's a legitimate option."

Finally, at the 7/2/14 Council Hearing (Exhibit H.15, page 34), Mayor Hales and Wood had the following interchange (comments directed towards multi-family and renters):

"Hales: In every case, our permittee is the person that we're dealing with. Somebody is coming in and applying for a permit to do this. And they would need to provide documentation that - they, the permittee, would need to provide documentation that they have their landlord's permission or their homeowner's association's permission to do this.

Wood: So our thinking- as this discussion has been going on, we've also been developing the application materials, because this is informing what it is that we want to communicate with the public when they come in for their permit. The idea is that the resident would be the person coming in for the permit. If they

aren't the owner of the property, then they also need to get the property owner's signature."

The Hearings Officer notes that the applicable version of City Code 33.207, in matters relating to this case, is a direct result of the legislative history found in Exhibits H.6, H.11, H.13, H.14, and H.15. The Hearings Officer finds the applicable version of City Code 33.207 was enacted pursuant to the ordinance attached as Exhibit H.16.

The Hearings Officer finds the legislative history (Exhibits H.6, H.11, H.13, H.14, and H.15) clearly indicates City Council intended that a Resident and "operator" may be separate persons/entities. The Hearings Officer finds the legislative history indicates City Council's intent to allow a person or entity, other than the Resident, to be the "operator" of an accessory short-term rental.

The Hearings Officer finds the legislative history strongly suggests that City Council intended to require the Resident, or an authorized representative of the Resident, to be the person who applies for a short-term rental permit. The Hearings Officer finds, based upon the legislative history provided in this case, that if the owner of a prospective ASTR property is a Resident, then the owner would apply for the short-term rental permit. The Hearings Officer finds that if a long-term renter is a Resident, then the long-term renter would need to be the applicant for an accessory short-term rental permit. The Hearings Officer finds Council intended a Resident, or an authorized representative of a Resident, would need to be the applicant for the short-term rental permit and would need to rent (directly or through an "operator") ASTR rooms.

The Hearings Officer finds the sole Resident at the Subject Property, as that term is defined in City Code 33.207, is the Son (Dylan Shore). Neither BDS nor Applicant argued that Applicant was a Resident at the Subject Property. The Hearings Officer finds Applicant, based upon evidence in the record of this case (in particular Exhibits A.1, A.7, A.8, H.9, and H.10), is not a Resident at the Subject Property.

The Hearings Officer acknowledges that the version of City Code 33.207 effective on dates relevant to this case would allow the Son, as the Resident, to authorize Applicant (as the Resident's authorized representative) to process an accessory short-term rental permit for the Subject Property. The Son could have authorized an attorney or land use consultant to process, on his behalf as the Resident, an application for an accessory short-term rental permit for the Subject Property. The key is that the Son, in the application before the Hearings Officer, is the Resident at the Subject Property and as such must be the person initiating an application to rent rooms on a short-term basis. There is no evidence in the record that the Son authorized Applicant (on behalf of the Son as the Resident) to file the application in this case.

The Hearings Officer considered whether or not there would be a circumstance where Applicant, as the owner of the Subject Property, could have rented the ADU to the Son and also have been an appropriate applicant. The Hearings Officer notes that Applicant could have rented the ADU to the Son and resided in the primary residence (i.e. a bedroom) for more than

270 days a year. In that situation, Applicant would be considered a Resident and would be an appropriate applicant for an ASTR permit. In that situation, the owner would have been a Resident and the Subject Property would be considered an accessory short-term rental property under City Code 33.207.

The Hearings Officer agreed with the BDS argument that City Council's first priority, when considering and then enacting City Code 33.207, was to assure residentially zoned properties remain dedicated to household living use. City Council addressed this priority, in part, by requiring the Resident to dwell at a property for at least 270 days per calendar year. The Hearings Officer also agreed with the BDS argument that Applicant, as the owner of the Subject Property, could be the "operator." However, such agreement with BDS arguments did not overshadow what the Hearings Officer believed to be the clear intent of City Council, as expressed in the legislative history, to require a Resident to be the person/entity ultimately making the decision to rent out rooms on a short-term basis. In this case, the person making the decision to rent out rooms, on a short-term basis at the Subject Property, is Applicant and not the Resident.

The Hearings Officer finds, based upon the narrow facts of this case, the Subject Property is not an accessory short-term rental property as described in City Code 33.207.020. The Hearings Officer finds application of the conditional use process in this case is not legally supportable. The Hearings Officer finds BDS should have denied the application. The Hearings Officer finds BWNA's prevails in its' appeal of the October 3, 2016 Notice of a Type II Decision on a Proposal in Your Neighborhood (Exhibit H.17).

In the OVERVIEW section of this decision the Hearings Officer described two issues raised by BWNA. BWNA's second issue, referred to as the "eligibility issue" was addressed in the findings above. BWNA's first issue related to neighborhood livability impacts. Neighborhood livability impacts were addressed by BDS in the Admin Decision (Exhibit H.17, pages 4-9). The Hearings Officer reviewed the Appeal Letter, 9/13 BWNA Letter, and Exhibit H.17. To the extent that the Admin Decision findings (Exhibit H.17, page 4-9) do not conflict with the Hearings Officer's eligibility findings in this decision, the Hearings Officer adopts Exhibit H.17, pages 4-9, as additional findings for this case. The Hearings Officer finds BWNA's arguments related to the neighborhood livability impacts issue are not persuasive. The Hearings Officer finds **BWNA** does not prevail on its' neighborhood livability impacts issue.

### III. CONCLUSION

Applicant, the owner of the Subject Property, submitted an application for a Type B accessory short-term rental (Exhibit A.1). BDS, in the Admin Decision (Exhibit H.17) approved Applicant's application. BWNA appealed the validity of the Admin Decision to the City of Portland Land Use Hearings Officer (Exhibit H.1, with subparts). BWNA alleged the Admin Decision was not correct in considering the Subject Property, as described in Exhibit A.1, as an accessory short-term rental as described in City Code 33.207.

The Hearings Officer reviewed City Code 33.207 by employing the *PGE v. BOLI* Template. The Hearings Officer found, based primarily upon the legislative history of City Code 33.207 provided by BDS (Exhibits H.6, H.11, H.13, H.14, and H.15), that City Code 33.207 requires a Resident (as defined by City Code 33.207.B.1) to rent rooms at a property if the rooms are rented for fewer than 30 consecutive days. The Hearings Officer found, based upon the legislative history, that the Resident (or an authorized representative of the Resident) can be the applicant for a City Code 33.207 accessory short-term rental permit.

The Hearings Officer found Applicant, in this case, was not a Resident at the Subject Property. The Hearings Officer found the Subject Property, in this case, did not meet the requirements of City Code 33.207. The Hearings Officer found the application could not be processed under City Code 33.207 and 33.815. The Hearings Officer found BDS had no authority to approve the Applicant's application for an accessory short-term rental in this case. The Hearings Officer found BWNA prevailed in its appeal.

#### IV. HEARINGS OFFICER'S DECISION

**Denial of Application for a Conditional Use Review** for establishment of an Accessory Short Term Rental at 4440 NE 35<sup>th</sup> Avenue . The Admin Review is found not valid.

Appellant, BWNA, prevails in this appeal.



Gregory J. Frank, Hearings Officer

11/30/16

Date

<b>Application Determined Complete:</b>	August 17, 2016
<b>BOS Decision to Hearings Officer:</b>	Submitted by Hearings Officer from BOS Planner's File on November 21, 2016
<b>Hearings Officer's Decision Mailed:</b>	December 2, 2016
<b>Last Date to Appeal:</b>	December 23, 2016

**Appealing this decision.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Application and original narrative, plans and tenant verification
  - 2. House Rules, received May 13, 2016
  - 3. Original Traffic Study, received June 15, 2016
  - 4. Original Site Plan, received June 26, 2016
  - 5. Parking Plan, received August 3, 2016
  - 6. Revised Traffic Study, received September 8, 2016
  - 7. Email from applicant, in response to neighbors' comments, September 13, 2016
  - 8. Second email from applicant, in response to neighbors' comments, September 15, 2016
  - 9. Renewal of tenant lease, received September 23, 2016
- B. Zoning Map
- C. Plans/Drawings
  - 1. Site Plan
  - 2. Parking Plan
  - 2. Elevation Drawings
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Police Bureau
  - 4. Summary of City service agency responses (including Water Bureau, Fire Bureau, Site Development Review Section of BDS, Life Safety Plan Review Section of BDS, Bureau of Parks, Forestry Division)
- F. Correspondence
  - 1. Carrie Carlson, email, August 26, 2016 name, date of letter,
  - 2. John Sandie, BWNA President, email, September 12, 2016
  - 3. Robert C. Haas, email, September 12, 2016
  - 4. Brian Lawler, email, September 12, 2016
  - 5. Candace McWane, email, September 13, 2016
  - 6. Dan and Anne, LaGrande, letter attached to email, September 13, 2016
  - 7. Alan Ellis, email, September 13, 2016
  - 8. Jack Bookwalter, BWNA Land Use Chair, letter attached to email, September 13, 2016
  - 9. Tim Hemstreet, email, September 13, 2016
- G. Other
  - 1. Letter from Kathleen Stokes to Lill Madland, April 27, 2016
- H. Received in the Hearings Office
  - 1. Notice of Appeal - Hemstreet, Tim

- a. Exhibit B -Hemstreet, Tim
  - b. Exhibit C-1- Hemstreet, Tim
  - c. Exhibit C-2 - Hemstreet, Tim
  - d. Type 11/IIx land use hearings officer process on appeals - Hemstreet, Tim
  - e. Type II and IIx Decision Appeal Form - Hemstreet, Tim
  - f. 10/17/16 Appeal of Approval of Conditional use Permit Application letter, Jack Bookwalter to Hearings Officer - Hemstreet, Tim
  - g. 9/13/16 Comments of the Beaumont Wilshire NA on Conditional Use Permit Application LU 16-155589 CU letter, Bookwalter to Kathleen Stokes - Hemstreet, Tim
2. Notice of Public Hearing for Proposed Administrative Rule: Accessory Short Term Rental Enforcement - Hemstreet, Tim
  3. Record Closing Information - Hearings Office
  4. Address - Bradley, John
  5. PowerPoint presentation printout - Stokes, Kathleen
  6. Accessory Short-term Rental Regulatory Improvement Workplan Recommended Draft - July 2014 - Stokes, Kathleen
  7. 11/16/16 Memo to Hearings Officer - Stokes, Kathleen
  8. 11/8/16 letter, Jill Madland to Kathleen Stokes - Stokes, Kathleen
  9. 9/9/16 letter, Dylan Shore to Kathleen Stokes - Stokes, Kathleen
  10. 11/9/16 letter, Jill Madland to Kathleen Stokes - Stokes, Kathleen
  11. Highlights from discussions of ASTR issues in legislative process compiled by Amanda Rhodes, BDS City Planner II - Stokes, Kathleen
  12. Planning and Sustainability Commission - 4/22/14 Meeting Minutes - Stokes, Kathleen
  13. 6/4/14 Closed Caption File of Portland City Council Meeting - Stokes, Kathleen
  14. June 24, 2014 Work Session Partial, Unofficial Transcript - Stokes, Kathleen
  15. 7/2/14 Closed Caption File of Portland City Council Meeting - Stokes, Kathleen
  16. Ordinance No. 186736 - Stokes, Kathleen
  17. 10/3/16 Notice of a Type II Decision on a Proposal in Your Neighborhood - Frank, Gregory J.