



June 4, 2018

To: Commissioner Eudaly

From: Margie Sollinger, Ombudsman

Re: Demolition delay for Roseway neighborhood property

I am writing to draw your attention to a matter that I have been unable to satisfactorily resolve with the Bureau of Development Services. As I will explain in more detail below, I am concerned that the Bureau is allowing the demolition delay process to be undermined to the detriment of community members and neighborhoods that are seeking to save viable housing from demolition. For the property at issue, I recommended the Bureau issue a stop work order and revoke the demolition permit.

According to City Code 24.55.200, the demolition delay provisions are intended to encourage alternatives to demolition through a two-part process. The first is a 35-day notice period during which demolition is automatically delayed, followed by a possible 60-day extension of the demolition delay period. Interested parties may request the additional 60-day extension by filing an appeal to the Code Hearings Office. Appeals are granted if four criteria are met: 1) contacting the property owner by mail to request a meeting to discuss alternatives to the demolition, 2) establishing the property's significance to the neighborhood, 3) providing a plan to save the structure, and 4) demonstrating a reasonable potential to consummate the plan.

The delay provisions are the result of extensive work by the Bureau and advisory bodies. There were multiple, multi-hour Council hearings to discuss the appropriate process, and the final result came about as amendments to the original proposal in response to community testimony.

In the case at hand, a residential property at [REDACTED] owned by an elderly, long-time resident was sold to [REDACTED] on September 15, 2017. [REDACTED] then sold the property to [REDACTED] on January 29, 2018. However, on February 6, 2018, [REDACTED], through an agent, represented itself to the City as the property owner when it submitted a building permit application to demolish the property. All but one of the documents submitted as part of the application package inaccurately list [REDACTED] as the property owner (the Certification Regarding Asbestos and Lead-Based Paint was signed by a [REDACTED] representative on February 5, 2018).



The Bureau did not catch the property ownership inaccuracy during its intake processing because the sale to [REDACTED] was not recorded with Multnomah County until over a week later on February 15, 2018. Relying on the inaccurate information, the Bureau sent a pre-populated demolition delay request form to Roseway Neighborhood Association that listed [REDACTED] as the current property owner.

As a result of the applicant supplying misinformation, Roseway Neighborhood Association unknowingly mailed the required letter to the wrong entity and filed an appeal against the wrong party. The Hearings Officer, who also believed the owner was [REDACTED], denied the request for an additional 60-day extension in part because there “is virtually no evidence in the record that suggests any communication” between the Neighborhood Association and [REDACTED] about selling the property, preventing the Neighborhood Association from demonstrating a reasonable potential to consummate the plan to purchase the home (Hearing’s Officer’s Order at 7).

The Neighborhood Association discovered the ownership discrepancy after the Hearings Officer heard the appeal, and filed a complaint with my office. The Neighborhood Association requested a restart to the appeal process with the true property owner identified.

The Bureau acknowledges that “because residential demolitions are a contentious issue in Portland at this time, some property developers who know they want to demolish a home will use various methods of disguising who the true owner is” (5/17/18 email from Nancy Thorington). Obscured identity of the property owner makes it difficult, if not impossible, for interested parties to meet the appeal criteria and win more time to engage in discussions about alternatives to demolition. Even though it undermines the integrity of the process, the Bureau is reluctant to take protective action.

I concluded the appropriate remedy in this instance is for the Bureau to issue a stop work order, revoke the permit, require [REDACTED] to apply for the demolition permit and restart the delay clock. This recommended remedy is consistent with the recourse outlined in the Bureau’s demolition application, which requires applicants to initial a Statement of Fact, certifying that:

the facts and information set forth in this application are true and complete to the best of my knowledge. I understand that any falsification, misrepresentation or omission of fact (whether intentional or not) in this application or any other required document, as well as any misleading statement or omission, *may be cause for revocation of permit . . . regardless of how or when discovered* (emphasis added).

The Bureau has declined to accept my Office’s recommendation. It argues that it does not get into tracking the various stages of real estate transactions. The Bureau also somehow concludes that there is no evidence of misrepresentation by the permit applicant in this case. In general,

the Bureau appears to be taking the position that a property owner's attempts to disguise and obscure ownership are beyond the Bureau's purview, viewing such efforts as another way for a property owner to express their non-desire to negotiate alternatives to demolition with neighbors.

Where a permit's issuance is predicated on misinformation supplied by the applicant and that misinformation disenfranchises community members from exercising their rights under City Code, the Bureau is obligated to take remedial action. I am asking you, as the Commissioner-in-Charge, to intervene and direct the Bureau to accept my recommendation and reconsider its position generally.