

BEFORE THE BOARD OF COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Building Code Violations by Brian Richards for Property Located on Bird Road, near Scappoose, Oregon

FINAL ORDER NO. 38-2017

WHEREAS, on March 14, 2017, Brian Richards was issued a Notice of Violation pursuant to the Columbia County Enforcement Ordinance (Ordinance No. 90-7, as amended) for building a 2-story detached garage at 52580 Bird Road, near Scappoose, Oregon (Tax Map ID. 3N1W07-BD-00200, which was formerly numbered as 3107-0030-00100) without required building permits; and

WHEREAS, the Notice of Violation imposed a fine of \$95,571, calculated at \$333 per day for the continuing violation of failing to obtain building permits during the period of May 18, 2016 through February 28, 2017; and

WHEREAS, Mr. Richards timely appealed the Notice of Violation on March 29, 2017; and

WHEREAS, upon receipt of Mr. Richards' appeal, a hearing was scheduled before the Board of County Commissioners (the "Board") for April 26, 2017, and notice of the hearing was mailed to Mr. Richards on April 5, 2017; and

WHEREAS, with the consent of Mr. Richards, the hearing was rescheduled to May 10, 2017, and notice of the rescheduled hearing was mailed to Mr. Richards on April 19, 2017; and

WHEREAS, the Board held a hearing on May 10, 2017, received evidence and testimony into the record, closed the hearing and continued deliberations to May 17, 2017; and

WHEREAS, on May 17, 2017, the Board issued a tentative decision finding Mr. Richards committed the alleged continuing violation and imposing \$45,000 of the fine immediately and suspending the remaining \$50,571 of the fine until October 1, 2017, if Mr. Richards obtains necessary permits by June 15, 2017 and brings the garage into compliance by October 1, 2017;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY FINDS, as follows:

1. The Board finds that Brian Richards committed the violations alleged in the Notice of Violation dated March 14, 2017. The record shows that Mr. Richards owns the property at 52580 Bird Road, near Scappoose, Oregon; that Mr. Richards constructed a two-story detached garage without required permits; and that the violation has continued during the period alleged, from May, 18, 2016 to February 28, 2017.

Based on the evidence in the record, Mr. Richards built the two-story garage without permits in 2005, and was first notified of the violation on December 1, 2005. In June 2009, he was cited and found guilty of three violations of failure to obtain permits. A \$537 penalty was imposed for each of those violations, for a total of \$1611.

Shortly thereafter, Mr. Richards began efforts to bring the garage structure into compliance with County codes. Because the garage sits within the required setbacks, Mr. Richards applied to the County for a variance. The Columbia County Planning Commission denied the

variance on October 7, 2009.

On October 20, 2009, Columbia County Code Enforcement Officer Robert Crain notified Mr. Richards that the garage must be either demolished or moved to a location on the property in compliance with setbacks. Mr. Richards then filed for building permits to move the garage. Following extensions, those permits expired on February 4, 2013.

Code Enforcement Officer Crain notified Mr. Richards in December 2012 of the pending expiration of the permits, and in February 2013 of the need to resubmit for permits, which had by then expired. Mr. Richards failed to respond, and Officer Crain issued a Notice of Violation pursuant to the County's building code enforcement process on October 31, 2013. Mr. Richards appealed the Notice of Violation, and on December 17, 2013, Mr. Richards agreed to a Corrective Action Plan to bring the garage into compliance by June 27, 2014.

Once again, Mr. Richards failed to comply. On March 14, 2016, Code Enforcement Officer issued a second Notice of Violation for the garage, imposing a fine of \$1667 for failure to obtain a building permit and \$1677 for failure to obtain an electrical permit. Mr. Richards did not appeal that violation. The Land Development Services Director issued Final Order No. 2016-002 on May 18, 2016, imposing a total fine of \$3,334. The fine was not paid, and a lien was recorded on September 14, 2016, pursuant to Board Order No. 53-2016.

On March 14, 2017, Code Enforcement Officer Crain issued a third Notice of Violation, which is the subject of this proceeding. This third Notice of Violation charged Mr. Richards with the continuing violation of failing to obtain a building permit for the detached garage for the period between May 18, 2016 through February 28, 2017. At the hearing on this violation, Mr. Richards stated that he did not dispute the facts, *i.e.*, that he built the garage without permits and that the violation continued during the period alleged. Based on the evidence in the record, the Board finds that Mr. Richards committed the continuing violation alleged.

2. The Board finds that the fine imposed for Mr. Richards' continuing violation is correct. Section 24 of the Columbia County Enforcement Ordinance provides that the County may assess a maximum of \$1000 per day for each continuing building code violation. However, the County will impose a reduced fine of \$333 per day for a continuing violation of a first offense.

Mr. Richards' violation is considered a first offense. He was found to have committed the violation of failing to obtain permits by the Land Development Services Director's Final Order No. 2016-002 issued on May 18, 2016. Mr. Richards did not pay the fine imposed by that final order, and a lien was recorded. Section 26 of the County's Enforcement Ordinance provides that payment of a fine does not relieve an offender of the responsibility to remedy the violation. Mr. Richards did not remedy the violation, and the violation continued from May 18, 2016 through February 28, 2017, a period of 287 days. Based on the fine of \$333 per day for a continuing violation on a first offense, the Board finds that the \$95,571 fine is correct.

The Board, however, also finds that the County's ultimate goal is compliance with its laws. The Board is therefore willing to reduce the fine if Mr. Richards remedies the violation by submitting for required permits no later than June 15, 2017 and achieving full compliance either by demolishing, moving or removing the building by October 1, 2017. The Board also finds that Mr. Richards' failure to comply for 12 years – despite \$1611 in fines in 2009 and \$3334 in fines in 2016 – is an aggravating factor. The Board understands that Mr. Richards

suffered financial and family health problems. However, the County has more than accommodated Mr. Richards over the course of 12 years. Mr. Richards, on the other hand, remains in violation. The Board therefore finds that a fine of \$45,000 is warranted to discourage any further violation. However, the Board is willing to suspend and ultimately dismiss the remaining \$50,571 if Mr. Richards submits for building permits by June 15, 2017 and achieves full compliance by October 1, 2017.

3. In support of its decision, the Board adopts the findings of fact in the Land Development Services Director's Final Order No. 2016-002 on the March 2016 violation, attached hereto as Attachment 1 and incorporated herein by this reference, to the extent those findings are consistent with the Board's decision.
4. The Board also adopts the above recitals as additional findings in support of its decision.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY ORDERS, as follows:


1. The Board finds that Brian Richards committed the continuing violation of failing to obtain a building permit for the construction of a two-story detached garage at 52580 Bird Road, Scappoose, Oregon (Tax Map ID 3N1W07-BD-00200, which was formerly numbered as 3107-0030-00100) for the period of May 18, 2016 through February 28, 2017. A fine of \$95,571 is hereby imposed
2. Of the \$95, 571 fine, \$45,000 is due and payable within 60 days of the date of this Order. Pursuant to ORS 30.460, the County may file and record a lien for any penalties that remain unpaid after 60 days.
3. The remaining \$50,571 of the fine shall be suspended, provided Mr. Richards obtains necessary permits for compliance no later than June 15, 2017, and achieves full compliance either by demolishing, removing or moving the detached garage and any other associated noncompliant development consistent with applicable County regulations by October 1, 2017.
4. County staff shall schedule a hearing with notice to Mr. Richards after June 15, 2017 to confirm that permits are in place and after October 1, 2017 to confirm that compliance has been achieved.

DATED this 7th day of June, 2017.

Approved as to form
By: 
Office of County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Henry Heimuller, Chair

By: 
Margaret Magruder, Commissioner

By: 
Alex Tardif, Commissioner

ORDER: 5/18/16
both Day: 7/18/16

ATTACHMENT 1

BEFORE THE DEPARTMENT OF LAND DEVELOPMENT SERVICES
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Building Code Violations)
by Brian Richards on Property Located at) FINAL ORDER NO. 2016-002
52580 Bird Road, Scappoose, Columbia)
County, Oregon, Tax Parcel No. 3107-030-00100)

A. SUMMARY

On March 14, 2016, Brian Richards was issued Notice of Violation for the following Building Code violation at 52580 Bird Road, Scappoose, Columbia County, Oregon, Tax Parcel No. 3107-030-00100:

Violation of the Oregon Residential Specialty Code, Section R105.1, "Permit Required".
Violation of the Oregon Residential Specialty Code, Section R105.5, "Permit Expired"

Brian Richards neither appealed the Notice of Violation nor corrected the violation and paid the assessed penalty by the end of the appeal period.

B. FINDINGS OF FACT

1. The Columbia County Assessor's Office records lists Brian Richards as the legal and responsible owner of the property located 52580 Bird Road, Scappoose, Columbia County, Oregon, Tax Parcel No. 3107-030-00100.
2. The Oregon Residential Specialty Code, Section R105.1, "Permit Required" states, "Any owner or an authorized agent who intends to construct, enlarge, alter, repair, move or change the occupancy of a building or structure, or erect, install, enlarge, alter, repair, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code or to cause any such work to be done, shall first make application to the Building Official and obtain the required permit." Further, Section R105.5 states, "Every permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by the permit is suspended or abandoned for 180 days after the work has commenced..."

Brian Richards constructed a two story, detached garage(623 sq. ft 1st floor and 578 sq. ft. 2nd floor), without required building permits and within required setbacks. Mr. Richards applied for but was denied a setback variance. And although Mr. Richards applied for building permits to correct the violations, those permits have expired.

3. Mr Richards applied for building permit BLD2010-00129 on November 2, 2009 and electrical permit ELE2012-00727 on June 18, 2012 in response to enforcement action necessary to correct the violations. On January 16, 2013, building permit BLD2010-00129 and electrical permit ELE2012-00727 expired. You failed to file for an extension, obtain a progress inspection or receive a final inspection before the permit(s) expiration date.

A courtesy notice was mailed to your address on December 12, 2012, which advised that the permits would expire on January 16, 2013.

4. On February 4, 2013, a letter was mailed to you via certified mail 7008 1300 0000 4816 8835 Mr. Richard's address at 52580 Bird Road, Scappoose, Oregon. The letter informed Mr. Richards that permits were required for the garage, how to remedy the violation(s) and that new permits would include an investigative fee. The certified mail was returned to this agency on March 4, 2013 and was stamped "unclaimed" by the United States Postal Service.
5. On October 31, 2013, a letter was mailed via certified mail 7008 3230 0000 8687 1168, to Mr. Richard's address at 52580 Bird Road, Scappoose, Oregon. The letter was to inform you that permits are required, how to remedy the violation(s) and that new permits would include an investigative fee.
6. On November 14, 2013, the Department of Land Development Services received a written appeal from you dated November 11, 2013 citing a financial hardship for you to move the existing building which was constructed without required permits and for which the aforementioned permit applications for relocation of the building you filed had expired .
7. On or about December 11, 2013, in lieu of rendering a decision on your appeal, I offered and discussed with you the attached corrective action plan which you subsequently signed and returned on December 17, 2013. By signing the corrective action plan you agreed to take the listed steps to relocate the subject building to an approved location on the subject property no later than June 27, 2014. As of the date of the December 11, 2013 notice you had not initiated the required permitting nor had you completed the work and received a final inspection as prescribed in the corrective action plan.
8. On March 14, 2016, a Notice of Violation was sent by certified mail 7008 3230 0000 8687 4633 to your address at 52580 Bird Road, Scappoose, Oregon assessing a fine of \$3,334 for the above listed violations and providing an opportunity for appeal within 14 days of said notice.
9. As of the date of this notice, you have failed to appeal the assessment of a fine, to obtain permits or complete work necessary to address the violations

C. CONCLUSIONS

1. Brian Richards has performed the work described above without a permit in violation of the Oregon Residential Specialty Code, Section R105.1, "Permit Required" and Section R105.5, "Expiration".
2. Notice of the violation and an opportunity to appeal was provided in accordance with the Columbia County Enforcement Ordinance (Ordinance No. 90-7, as amended).
3. Pursuant to Section 24 of the Enforcement Ordinance, a fine of up to \$5,000 may be assessed for a single building code violation or up \$1,000 per day for each continuing violation. Columbia County Board of Commissioners' Order No. 42-2014 establishes a schedule of fines for building code violations. Under Order No. 42-2014, the fine for a first offense is \$1,667 each for failure to obtain building and electrical permits and allowing permits to correct the violation expire without completion of work. Based on the reasons described above, the Director has determined that the appropriate sanction here is a civil penalty of \$3,334.

D. DECISION

Based on the findings and conclusions set forth above and in the record in this case, the Director of Land Development Services, as hearings officer, hereby orders:

1. Penalties be assessed for the following building code violations, as follows:

A civil penalty in the amount of \$3,334 for violation of the Oregon Residential Specialty Code, Section R105.1, "Permit Required" and Section R105.5, "Expiration". Payment of the fine does not relieve you of the requirement to correct the violation(s), and the County may seek other remedies as allowed by law to enforce its regulations.
2. Pursuant to ORS 30.460, penalties shall be paid within 60 days of the date of this order. After 60 days, the County may file and record this Order for payment of unpaid penalties in the Columbia County Clerk Lien Record.

E. APPEAL RIGHTS

County Ordinance 92-15, as amended, provides that the Director's written decision is final. The decision may be appealed to Circuit Court as provided in ORS 34.010 to 34.012.

Dated this 18th day of MAY, 2016

By: Todd Dugdale
Todd Dugdale
Director of Land Development Services

U.S. Postal Service *-add/LDS*
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Total Postage & Fees	\$ <i>6.46</i>



Sent To	<i>Brian Richards</i>
Street, Apt. No., or PO Box No.	<i>52580 Bird Rd.</i>
City, State, ZIP+4	<i>Seaside, OR 97056</i>

PS Form 3800, August 2006

See Reverse for Instructions

7006 3450 0002 4494 8729
Return receipt request