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CITY OF LAKE OSWEGO
Historic Resources Advisory Board Minutes
October 23, 2013

1. CALL TO ORDER / ROLL CALL

Chair Kasey Holwerda called the meeting to order at 7:00 p.m. in the Council Chambers of City Hall, 380 A Avenue, Lake Oswego, Oregon.

Members present: Chair Kasey Holwerda, Vice-Chair Jeannie McGuire, Holly Rodway and Donald Ross
Members absent: Craig Foster, Lynda O'Neill and Dylan Oster
Council Liaison: Councilor Jon Gustafson was not present
Staff: Paul Espe, Associate Planner/Staff Liaison; Leslie Hamilton, Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support

2. PUBLIC HEARING

2.1 LU 13-0012 A request by Mary Cadwell (Wilmot Trust) to remove the historic landmark designation from the Carman House and property and approval of a historic landmark designation on a new tract that will be established from a section of the existing Carman House site. Continued from October 9, 2013.

Chair Holwerda opened the hearing. Mr. Boone noted the hearing had been continued from October 9, 2013. The record had been held open to receive the applicant's final written argument but none had been submitted. He advised the Board not to consider two exhibits (Exhibits F-13 and F-14) that were from the applicant and addressed to Mr. Boone that had come in after the close of the public hearing. He asked Board members to declare any *ex parte* contacts, bias or conflict of interest. None were declared. Ms. McGuire, who had not been present at the previous hearing, reported that she had reviewed the evidence and listened to the recordings of the previous hearings. No one present objected to the Commissioners considering the case before them.

Deliberations

Chair Holwerda opened deliberations.

Ms. Rodway said she had reviewed the Minutes of September 11, 2013. She thanked those who had testified that night. She indicated she was sympathetic to the fact that heirs had their feelings and opinions about property, but the testimony she read pointed out to her very strongly, as Dr. Beckham had so elegantly pointed out, how important it is to consider that there are fewer than 200 such properties from the Donation Land Claims in the western part of the state. That was a really strong comment for her to take and reread. She thanked Dr. Beckham for that.

Mr. Ross said his feeling was that the emphasis on the property as a historic element dating back to 1850 was so very heavily weighing on this thing that he thought they had to

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be very careful what they did about it at this point. The facts that, #1, they were the early pioneers who came here and settled on the property; and #2 that they established a farm and used that farm and developed that farm and it had been a farm clear up until the 1950s and 60s when they started to sell off some of the land. He said he still felt it was an important historic element in their community and that they should be very careful about preserving it.

Ms. McGuire started to recall the history of the Board's first meeting and subsequent public hearings, starting in January of 1990. She could recall it because she had served on that first board. She said ample opportunity was given in the early 1990s via a public hearing process for owners to request their property be removed.

Mr. Boone reminded the Board members they did not need to rely on their memory. The question was what was the evidence in the record. Ms. Holwerda noted the evidence was that they objected in the record at the time. She confirmed for Ms. McGuire that it was in writing, dated, and signed by the original owner. It was in Exhibit 6.

Ms. McGuire said she had noticed something here that was a little bit perplexing. Mr. Koback referred to 'a property owner' several times in the documents he had given them. She thought that 'a property owner' could be a man or woman standing on a street corner who happened to own property. To say, "any property owner, any time in the process" seemed to indicate that person could be asked, "Do you wish to have this property remain on the Landmark Designation List, or to have it removed?" when that person would have nothing whatsoever to do with the property in question. She said that was why she felt that only the original property owner could be the person to request - within that really early time frame - that the property be removed, and not subsequent owners.

Ms. Holwerda said she thought Ms. McGuire had hit on the crux of the situation. The HRAB was first asked to remove the property under the city code. That request was withdrawn and then the statutory basis under 197.772 was raised. They had a memo from SHPO saying that their interpretation has been that the special right to delisting created by the statute is available only to an original, objecting, owner of the subject property. If title has changed hands that right is not passed along to the subsequent owner. Ms. Holwerda said she thought that was where she was coming down on this. She felt that to imply that the legislature would give that right to property owners forever-after, for the next 200 years, did not make sense. The original property owner may have objected, but he was still living when the statute was passed and did not raise the statute then. The property had changed hands two more times – once to his wife, and now to the Trust – so it was not the original property owner before the Board. They had no legal precedent defining who 'a property owner' is. No case in Oregon had been decided defining that for them. She said she believed that under that situation they had to deny the application because she did not think they could interpret the law in a way that it did not specify. That would involve them making some legal interpretation. She said she thought the legal interpretation she was inclined to make was that the legislature did not intend this right to pass on through subsequent property owners. It did not make sense to her that they would do that.

Ms. McGuire indicated she agreed with Ms. Holwerda. She said she thought it was ambiguous, but "you need to read intent into this." Otherwise they had the scenario she had just described.

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Ms. Holwerda referred to SHPO's perspective. They were the state government agency in charge of these things and must deal with these sorts of things a lot. She said that so far nobody had raised a different one to challenge that one. This might be that case, but she did not think it was their position that they should interpret it that way, as the applicant wanted them to. She said the Board had to be mindful that it did not make sense to have this go on and on forever to every property owner that ever owns a Landmark, because, in that case, everything could be removed forever after.

Mr. Ross added that when they visited the site he had walked through it as much as he could. He said he did not think it was a total failure as a house that can be repaired, so his own feeling was that did not influence the decisions they may make. He said he did believe that it has a strong historical value to this community and should be preserved.

Ms. McGuire said she would like to know in detail what research the owner had done to find options to demolition. She noted others had asked for that information in writing in the documentation in the record.

Mr. Boone advised that since the issue was limited to the statutory basis that 'a property owner' objects to the imposition of the designation, they did not need to get into what the condition of the property was and what alternative means had been considered. That was under the city code provision. They were not proceeding under the code provision.

Ms. Holwerda said she was hearing consensus that they believed 'a property owner' that could remove this under the statute would have to be the original property owner.

Mr. Ross **moved** to deny the request to have the historic designation removed. Ms. McGuire **seconded** the motion and it **passed** 4:0.

Mr. Boone then announced this was a tentative decision which would be brought back to the HRAB for adoption of findings on November 4 at 6:30 p.m. at the Main Fire Hall at 3rd Street/B Avenue.

3. ADJOURNMENT

The next meeting was scheduled on November 4, 2013. There being no other business Chair Holwerda adjourned the meeting at 8:00 p.m.

Respectfully submitted,

Paul Espe
Associate Planner

