

**From:** Ian Johnson [<mailto:ian.johnson@state.or.us>]  
**Sent:** Tuesday, October 08, 2013 9:14 PM  
**To:** Boone, Evan  
**Subject:** Re: FW: Ray Carman House in Lake Oswego

Mr. Boone,

Thanks for your question, we do appreciate it. Before I answer, let me admit that I myself am not an attorney, and in the absence of clear direction from either the courts or the Legislature we at the Oregon SHPO for a number of years have relied on our reading of statute and the collective experience and opinion of the many jurisdictions that work with these laws. That said, the interpretation of ORS 197.772 varies from community to community. For instance, in Washington County an owner may remove a property from the local landmark list under this law at any time, but in nearby Portland a landmark designation cannot be removed after the process is complete.

We base our interpretation on the following: 197.772(1) allows for a property owner to refuse consent during the designation process, but does not note any subsequent opportunity for a property owner to refuse designation. It is therefore our reading that 197.772(3) refers to this initial designation process, and that the imposition of a designation would only occur if the property was designated a local landmark over the objection of the property owner at the time the designation process occurred. In the *Demlow* case, LUBA found that the owner could not subsequently remove a property from a local landmarks list if the owner did not object to the designation during the designation process. It therefore is our position that once a designation is accepted, or at least not objected to, that this designation, like any other zoning, would remain valid even as the property changes hands. Our interpretation does not distinguish between a successor owner by inheritance or a purchaser for value. In both cases, the new owners take possession of the property with the designation already in place. While the new owner may not have been aware of the designation, we view this as a failure for the new owner to complete proper due diligence since local landmark designations are part of the public record.

If there is a question of due process during the designation process, we encourage local jurisdictions to review the requirements of their own ordinances to determine if proper notice and the opportunity to object was provided to the original property owner.

I hope that this answer helps, and please do keep us informed of the outcome of this case.

Thanks.

Ian

\*\*\*\*\*

Ian P. Johnson, Historian  
Oregon SHPO  
725 Summer Street NE, Suite C  
Salem, Oregon 97301  
Ph: (503) 986-0678  
Fax: (503) 986-0793

Visit our website: [www.oregonheritage.org](http://www.oregonheritage.org)

Comments or suggestions:  
[Heritage.Programs@state.or.us](mailto:Heritage.Programs@state.or.us)

>>> "Boone, Evan" <[eboone@ci.oswego.or.us](mailto:eboone@ci.oswego.or.us)> 10/8/2013 8:35 AM >>>

Mr. Johnson:

Paul Espe forwarded your email below to me. As you may know, the question of whether ORS 197.772 is personal only to the original owner upon whom the designation was "imposed" is a key question in an application for removal of designation to be decided by our Historic Resources Advisory Board Wednesday evening. Can you provide any backup information regarding the SHPO interpretation, i.e., legislative history? Neither the text of the statute nor the LUBA discussion in the *Demlow* case provide insight into the appropriate statutory construction, per *PGE v. BOLI* or *State v. Grimes* rules for statutory construction, so I'm wondering if there is additional legislative history that SHPO has identified on this point.

I also wonder if SHPO's interpretation distinguishes between a successor owner by inheritance v. purchaser for value/

Thank you for any assistance you can provide.

Thanks,  
Evan Boone  
Deputy City Attorney  
Lake Oswego City Attorney's Office  
P.O. Box 369  
Lake Oswego, OR 97034  
503-635-0225  
[eboone@ci.oswego.or.us](mailto:eboone@ci.oswego.or.us)

**From:** Ian Johnson [<mailto:ian.johnson@state.or.us>]  
**Sent:** Friday, October 04, 2013 10:57 AM  
**To:** [kleinmanjl@aol.com](mailto:kleinmanjl@aol.com)  
**Cc:** Espe, Paul; Marylou Colver  
**Subject:** Ray Carman House in Lake Oswego

Jeff,

Thank you for contacting me today regarding ORS 197.772. As I noted in our conversation, our office has advised local governments on the application and interpretation of ORS 197.772 since its enactment in 1995. Our consistent 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.

I have copied your client Marylou Colver and our local City contact for the Certified Local Government Program, Paul Espe, on this email.

Ian

\*\*\*\*\*

Ian P. Johnson, Historian  
Oregon SHPO  
725 Summer Street NE, Suite C  
Salem, Oregon 97301  
Ph: (503) 986-0678  
Fax: (503) 986-0793

Visit our website:  
[www.oregonheritage.org](http://www.oregonheritage.org)

Comments or suggestions:  
[Heritage.Programs@state.or.us](mailto:Heritage.Programs@state.or.us)

---

**PUBLIC RECORDS LAW DISCLOSURE**

This e-mail is a public record of the City of Lake Oswego and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.