



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Leslie Hamilton, AICP, Senior Planner
Planning and Building Services Department

SUBJECT: LU 13-0012, a request to remove the historic landmark designation on the Carman House

DATE: December 6, 2013

ACTION

Hold a public hearing and issue a tentative decision on LU 13-0012¹.

INTRODUCTION/BACKGROUND

In 1990, the Carman House and property, located at 3811 Carman Drive, was designated as a historic landmark along with 92 other properties by the adoption of Ordinance 2000. The property owner at the time, Mr. Richard Wilmot, requested that the historic designation be individually reviewed at a public hearing before the Historic Resources Advisory Board (HRAB) and City Council (Council). Both HRAB and Council voted to retain the historic designation on the property, and the designation was further confirmed on the 1.25-acre site by both HRAB and Council after the Carman barn, located on a separate tax lot, was destroyed by fire (Exhibit D-1).

In March of 2013, the current owner of the Carman House, the Mary Cadwell Wilmot Trust, submitted a Land Use application seeking removal of the historic landmark status from the Carman House and property, and the approval of historic landmark designation on a new tract of land established from a small section of the existing Carman House site. The request addressed the standards of LOC 50.06.009, Historic Preservation. Pursuant to this Code, in order for a historic landmark designation to be removed, the reviewing authority must find that

¹ There is a procedural dispute as to whether the decision being appealed is under the original case number and application, or whether the decision is pursuant to an October 21, 2013 letter from the attorney of the Trust requesting removal. In any event, HRAB made a decision based upon the request for removal of the historic designation, and that decision was appealed and is now before the Council.

the landmark designation is no longer justified after consideration of the criteria found in LOC 50.06.009.5.a, Criteria to Designation of a Landmark.

On August 14, 2013, the applicant submitted additional information regarding this request (Exhibit G-2-3), specifically indicating additional grounds for removal under ORS 197.772(3) (Exhibit F-8). Under this state statute:

“(3) A local government shall allow *a property owner* to remove from the property a historic property designation that was *imposed* on the property by the local government.”

On September 11, 2013, following the first public hearing before HRAB, the applicant requested that the Board consider removal of the designation only under ORS 197.772(3), withdrawing consideration of removal under LOC 50.06.009.5.c. HRAB considered the applicant’s request² solely under ORS 197.772(3) during its deliberations on October 23, 2013, and concluded that the removal of the historic landmark designation from the Carman House and property is not warranted under ORS 197.772(3). HRAB adopted its Findings, Conclusion, and Order on November 4, 2013, denying the request for removal. Wilmot Trust filed a Notice of Appeal on November 19, 2013.

DISCUSSION

ORS 197.772, enacted in 1995, allows a property to be removed from historic designation if the designation was “imposed” on the property (Exhibit F-8). In *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001) (Exhibit F-10), the Land Use Board of Appeals (LUBA) held, after reviewing the legislative history of the adoption of ORS 197.772(3), that “imposed” means a property owner must have actively objected to the historic landmark designation during the designation process in order to now utilize the statutory removal provision. As described earlier, the owner of the Carman House in 1990, Richard Wilmot, requested individual evaluation for both Tax Lot 1200 (Carman House) and Tax Lot 1201 (Carman barn) within the designation period. The long history of the HRAB and Council hearings and findings, the appeal to LUBA (later withdrawn after destruction of the barn), and HRAB and Council’s subsequent reconsideration of the historic designation on both tax lots is documented in the August 1, 2013 staff report (Exhibit D-1).

As described in the staff report to HRAB dated September 10, 2013 (Exhibit D-2), staff notes that in 1991, the Council found that the then property owner objected to the historic landmark

² On October 21, 2013, the Wilmot Trust submitted two letters to the City. The first letter withdrew its “land use” application then pending before HRAB, which at that time was based only on ORS 197.772. The second letter requested the City to remove the historic designation based on ORS 197.772(3); and to make that decision by October 23, 2013, the same night as the HRAB meeting for deliberation the application. HRAB proceeded with deliberation based upon the record that had been established in its earlier public hearing; the second letter was not entered into the HRAB record because the public hearing deadline for submission of materials to HRAB had expired.

designation of the Carman House and the 1.25-acre parcel of land that surrounds it. From the record in the 1991 and 1992 proceedings, the owner objected to the historic landmark designation in the means and manner available to them at the time, thereby meeting the “imposed” requirement under ORS 197.772.

At the October 23, 2013 public hearing, HRAB heard testimony both for and against the legal question of whether the current owner / applicant / requestor could obtain removal of the historic designation under ORS 197.772(3) when it was a *prior* owner that had objected to the historic designation at the time of the designation. HRAB found that the owner of the Carman House and property at the time of designation, in 1990, was Richard Wilmot, and that he later transferred it to Mary S. Wilmot, and then later she transferred it to the Mary Cadwell Wilmot Trust by warranty deed in 2001 for no consideration amount. The issue of “transferability” under ORS 197.772(3) is not addressed directly in the statute. HRAB, applying the method of statutory construction described in Exhibit B-1, found that the provisions of ORS 197.772(3) cannot be exercised by the current owner of an historic designated site if the current owner was not the owner of the property at the time of “imposition” of the designation (per Demlow).

APPEAL

On November 19, 2013, the applicant / requestor filed a precautionary appeal to the Council of HRAB’s decision (Exhibit A-1). While the applicant / requestor does not believe that HRAB’s decision is appealable to the Council under any current provision of the Community Development Code, the City Attorney’s Office concluded that a right of appeal does exist under LOC 50.007.003.14.e and 15.e or LOC 50.03.002.3 (Exhibit B-1).

Note: The applicant is separately pursuing a writ of mandamus in Clackamas County Circuit Court to compel the City to remove the historic landmark designation from the Carman House and property under ORS 197.772; at the time of this report, motions have been filed by the City Attorney’s Office against the Alternative Writ, include a motion to extend the time for response to the Alternative Writ until after the City Council’s hearing.

ALTERNATIVES & FISCAL IMPACT

There are no fiscal impacts.

RECOMMENDATION

Staff recommends that the City Council issue a tentative decision and direct staff to return with findings and conclusions for adoption on January 7, 2014.

EXHIBITS**A. APPEALS**

A-1 Notice of Appeal from Applicant's Legal Representative, Christopher Koback, Hathaway Koback Connors LLP, 11/19/2013

B. FINDINGS, CONCLUSIONS AND ORDER

B-1 Historic Resources Advisory Board (HRAB) – Findings, Conclusions and Order, Approved 11/04/2013

C. MINUTES

C-1 Approved HRAB Minutes, 08/14/2013 – Hearing Continued (no discussion)
C-2 Draft HRAB Minutes, 09/11/2013
C-3 Draft HRAB Minutes, 10/09/2013
C-4 Draft HRAB Minutes, 10/23/2013

D. STAFF REPORTS/MEMOS

D-1 Staff Report, 08/01/2013
D-2 Supplemental Staff Report, 09/10/2013

E. GRAPHICS/PLANS

E-1 Tax Map
E-2 Vicinity Map
E-3 Site Plan
E-4 Applicant's Photos of Site and Structure
E-5 Preliminary Plat Plan with historic tract
E-6 Site Map of original Carman farm complex

F. WRITTEN MATERIALS

F-1 Applicant's Narrative, dated 06/10/2013
F-2 Fire Marshal Comments
F-3 Cultural Resources Inventory for the Carman House
F-4 HR 7-90(A) and (B); City Council Findings, Conclusion and Order, dated 07/07/1992
F-5 HR 7-90(A) and (B) Remand 953; HRAB Findings, Conclusion and Order, dated 04/29/1992
F-6 HR 7-90(A) and (B); City Council Findings, Conclusion and Order, dated 07/17/1991
F-7 Contractor Bid for Restoration, Windwood Homes, 02/25/2013
F-8 Oregon Revised Statute 197.772
F-9 Applicant's Narrative, 05/15/1990 (HR 7-90) **Superseded by F-9.1**
F-9.1 Applicant's Narrative, 05/15/1990 (HR 7-90)
F-10 Demlow v. City of Hillsboro, 39 Or LUBA 37 (2001) Opinion

- F-11 E-Mail to Evan Boone from Ian Johnson, Oregon State Historic Preservation Office, 10/08/2013
- F-12 Staff Memo from Evan Boone, 10/09/2013

G. LETTERS

Neither for nor Against

- G-1-1 Letter from Carolyn McGreevy, 08/09/2013

Support:

- G-2-1 Letter from Elizabeth Weibel Scherdt, 08/12/2013
- G-2-2 Letter from Paul & Jacqueline Heydenrych, 08/12/2013
- G-2-3 Letter from Christopher Koback, Hathaway Koback Connors LLP, 08/14/2013
- G-2-4 Letter from Christopher Koback, Hathaway Koback Connors LLP, 10/07/2013

Opposition:

- G-3-1 Letter from Wilma & Joel McNulty, 07/30/2013
- G-3-2 Letter from Carol & Tommy Hull, 08/03/2013
- G-3-3 Letter from Molly Mikolaitis, 08/09/2013
- G-3-4 E-Mail from Bill & Marita Barbat, 08/12/2013
- G-3-5 E-Mail from Nancy Tongue, 08/13/2013
- G-3-6 Letter from Cathy Galbraith, Architectural Heritage Center, 08/13/2013
- G-3-7 Letter from Peggy Moretti, Restore Oregon, 08/13/2013
- G-3-8 E-Mail from Stephen Beckham, Oswego Heritage Council, 08/14/2013
- G-3-9 Letter from Erin O'Rourke-Meadors, 08/14/2013
- G-3-10 E-Mail from Marylou Colver, Lake Oswego Preservation Society, 08/14/2013
- G-3-11 Statement from Susanna Campbell Kuo, Ph.D., 08/14/2014
- G-3-12 Letter from Erin O'Rourke-Meadors, 08/14/2013
- G-3-13 Statement from Erin O'Rourke-Meadors, 08/14/2013
- G-3-14 Statement from William & Marita Barbat, 08/14/2013
- G-3-15 Demlow v. City of Hillsboro Citation submitted by Jeffrey Kleinman, 09/11/2013
- G-3-16 Warranty Deed submitted by Jeffrey Kleinman, 09/11/2013
- G-3-17 Letter from Marylou Colver, Lake Oswego Preservation Society, 09/11/2013
- G-3-18 Letter from Stephen Dow Beckham, 10/03/2013
- G-3-19 E-Mail from Ian Johnson, Oregon State Historic Preservation Office, 10/04/2013
- G-3-20 Letter from Jeffrey Kleinman, 10/09/2013