



Legislation Text

File #: PC 17-139, **Version:** 1

Land Use Board of Appeals (LUBA) Remand of the Historic Nomination for the Community Cannery and Workshop Annex in the Upper Yard of the City's Public Works Operations Center

RECOMMENDED ACTION (Motion):

Staff recommends the City Commission accept public testimony and consider the following:

- Whether the City waived its right to refuse consent for historic designations under ORS 197.772(1) by delegating authority to designate resources to the HRB.
- Whether the City Manager had authority under the city charter to refuse to consent.
- Whether ORS 197.772(1) allows public entities to refuse to consent to a historic designation.

The Commission may decide whether to adopt staff's recommended findings or to make a tentative decision and return at a following meeting with findings consistent with its decision.

BACKGROUND:

In 2004, the City completed an historic inventory of the buildings located within the City's Public Works Operations Center, including two buildings on the upper campus, then known as the Cannery and Warehouse buildings. The inventory concluded with a determination that these buildings were not eligible for designation on the National Register of Historic Places either because they "lacked distinction" or they had been "altered." The 2004 inventory sheets indicate that the property on which these structures were located, the Public Works Operations Center complex, was owned by the City.

On March 2, 2017, MNA filed an application to designate the Cannery and Warehouse buildings as historic landmarks on the City's local historic inventory. The application provides that these buildings were suitable for designation because of new information - their association with Camp Adair, a US Army World War II training facility, located near the City of Corvallis. The application states that these buildings are owned by the City of Oregon City.

Upon receiving the request, the City researched the eligibility of the structures and received communications from a Historian with the State Historic Preservation Office indicating that, notwithstanding this new information, these buildings would be ineligible for listing in the National Register of Historic Places. A letter from Restore Oregon confirmed this result.

On April 18, 2017, the City Manager Tony Konkol issued a letter refusing to consent to the historic designation of these two buildings pursuant to ORS 197.772(1). Attached to the City Manager's letter was a memorandum to the HRB explaining that the City had previously created and approved a Master Plan for the property to improve services for the public. In order to achieve that goal, the

Camp Adair structures were proposed to be removed. The memorandum included consideration for the designation of the structures and indicated that the City would attempt to find a suitable place to relocate the buildings and if the structures could not be relocated, they would be deconstructed. At its April 25 hearing, the HRB received a briefing on the historic nomination for the Camp Adair buildings including a presentation by staff and public comments from MNA's attorney. Consistent with ORS 197.772, the application was removed from any further consideration by the HRB. On April 27, city staff mailed notice to MNA that the HRB would be taking no further action to consider the request.

MNA appealed Mr. Konkol's April 18th letter as well as the HRB's failure to take action on the application to LUBA. Before LUBA, MNA raised the following issues: (1) whether a local government is entitled to withdraw consent for a historic designation under ORS 997.772(1); (2) whether Oregon City waived the right to refuse consent; (3) whether the City Manager had authority to withdraw consent under the City Charter; and (4) that the HRB had an obligation to hold a hearing and make a decision on the substance of the application consistent with the City's hearing requirements set forth in Oregon City Municipal Code 17.50.

LUBA agreed with MNA, in part. LUBA found that the City should have addressed items 2 and 3 in the list above. First, the City must consider whether it waived its right to refuse consent for historic designations under ORS 197.772(1) by delegating authority to designate resources to the HRB. Second, the City must consider whether the city manager had authority under the city charter to refuse to consent. LUBA did not make any ruling on whether public property owners are entitled to withdraw consent under ORS 197.772(1). As a result, the City Commission should make a decision on the scope of ORS 197.772(1) as well.

On November 15, the City Commission will hold a public hearing to resolve the issues raised in LUBA's opinion in MNA v. City of Oregon City, LUBA Nos. 2017-052/054. Though anyone is allowed to testify, the City Commission's review should be limited to arguments related to the three items identified above and no new evidence is allowed. After hearing testimony from the public limited to these three issues, the City Commission's decision will become the City's final decision and is appealable to LUBA within twenty-one days of when it becomes final.