



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

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www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: August 19, 2015
Jurisdiction: City of West Linn
Local file no.: ZC-14-02/DR-14-02
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 08/17/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD less than 35 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
 File No.: 001-15 {23729}
 Received: 8/17/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of West Linn

Local file no.: **ZC 14-02/DR 14-02**

Date of adoption: 8/10/15

Date sent: 8/17/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): April 3, 2015

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

NA

Local contact (name and title): John J. Boyd AICP, Planning Manager

Phone: 503-656-4211

E-mail: jboyd@westlinnoregon.gov

Street address: 22500 Salamo Road

City: West Linn

Zip: 97068-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

NA

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------|----|--------|--|
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres: NA

Non-resource – Acres:

Forest – Acres: NA

Marginal Lands – Acres:

Rural Residential – Acres: NA

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres: NA

Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres: NA

Non-resource – Acres:

Forest – Acres: NA

Marginal Lands – Acres:

Rural Residential – Acres: NA

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres: NA

Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

NA

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from NA to Acres:

Change from NA to Acres:

Change from NA to Acres:

Change from BA to Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: Willamette Historic District Acres added: Acres removed: 0.62

Location of affected property (T, R, Sec., TL and address): Map 31E02BC004500 - 1344 14th Street

List affected state or federal agencies, local governments and special districts: State Historic Preservation Office.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Council Ordinance 1638 and Final Decision and Order ZC 14-02

ORDINANCE NO. 1638

AN ORDINANCE AMENDING THE ZONING MAP TO REMOVE THE PROPERTY LOCATED AT 1344 14TH STREET FROM THE WILLAMETTE HISTORIC DISTRICT OVERLAY ZONE AND ADDING A HISTORIC RESOURCE MAP TO CHAPTER 25

WHEREAS, Community Development Code (“CDC”), Chapter 99 provides approval criteria for quasi-judicial decision making and Chapter 105 provides approval criteria for amendments to the CDC and maps; and,

WHEREAS, the Applicant sought removal of 1344 14th Street, West Linn, Oregon (“Property”), from the Willamette Historic District overlay zone (“Willamette Historic District”); and,

WHEREAS, the City provided quasi-judicial notice pursuant to CDC Chapter 99; and,

WHEREAS, the West Linn Historic Review Board held a public hearing on October 21, 2014, and June 9, 2015, and made a recommendation to deny removal of the Property from the Willamette Historic District; and

WHEREAS, the West Linn City Council held a remand hearing on May 11, 2015, and a public hearing on July 13, 2015, and adopted its Final Decision and Order on July 20, 2015; and

WHEREAS, the Final Decision and Order of the City Council removes the Property from the Willamette Historic District; and

WHEREAS, removal from the Willamette Historic District requires a modification to the Zoning Map, which must be done by ordinance;

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. New Section. Section 25.140 of the City of West Linn Community Development Code, incorporating Figure 1, which is attached to this Ordinance, is added as follows:

25.140 Historic Resource Map

The Historic Resource Map, shown in Figure 1 below, identifies the Willamette Historic District, as shown on the Zoning Map; the Willamette Falls Drive Commercial Design District, as identified in CDC 58.030(C); and the historic landmarks identified on the Zoning Map.

SECTION 2. Amendment. The Zoning Map shall be amended to remove the Willamette Historic District overlay zone from the Property both identified on Assessor’s Map 31E02BC, as Tax Lot 4500, and more particularly described in Exhibit A. The amendment to the Willamette Historic District boundary is depicted in Exhibit B.

SECTION 3. Amendment. The Community Development Code is amended to change the following terms wherever the terms appear throughout the Community Development Code from "Willamette Falls Drive Commercial Design Standards"; "Willamette Falls Drive Commercial District Design Standards"; "Willamette Falls Drive Commercial District"; and "Willamette Falls Drive Commercial District/Overlay Zone" to "Willamette Falls Drive Commercial Design District".

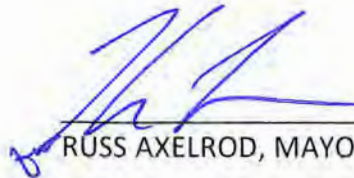
SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 4-7) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references, inconsistent terminology, and any typographical errors.

SECTION 5. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

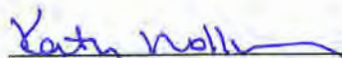
SECTION 6. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 7. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 3rd day of August, 2015, and duly PASSED and ADOPTED this 10th day of August, 2015.

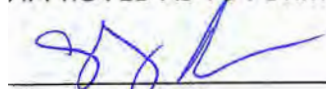


RUSS AXELROD, MAYOR



KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:



CITY ATTORNEY

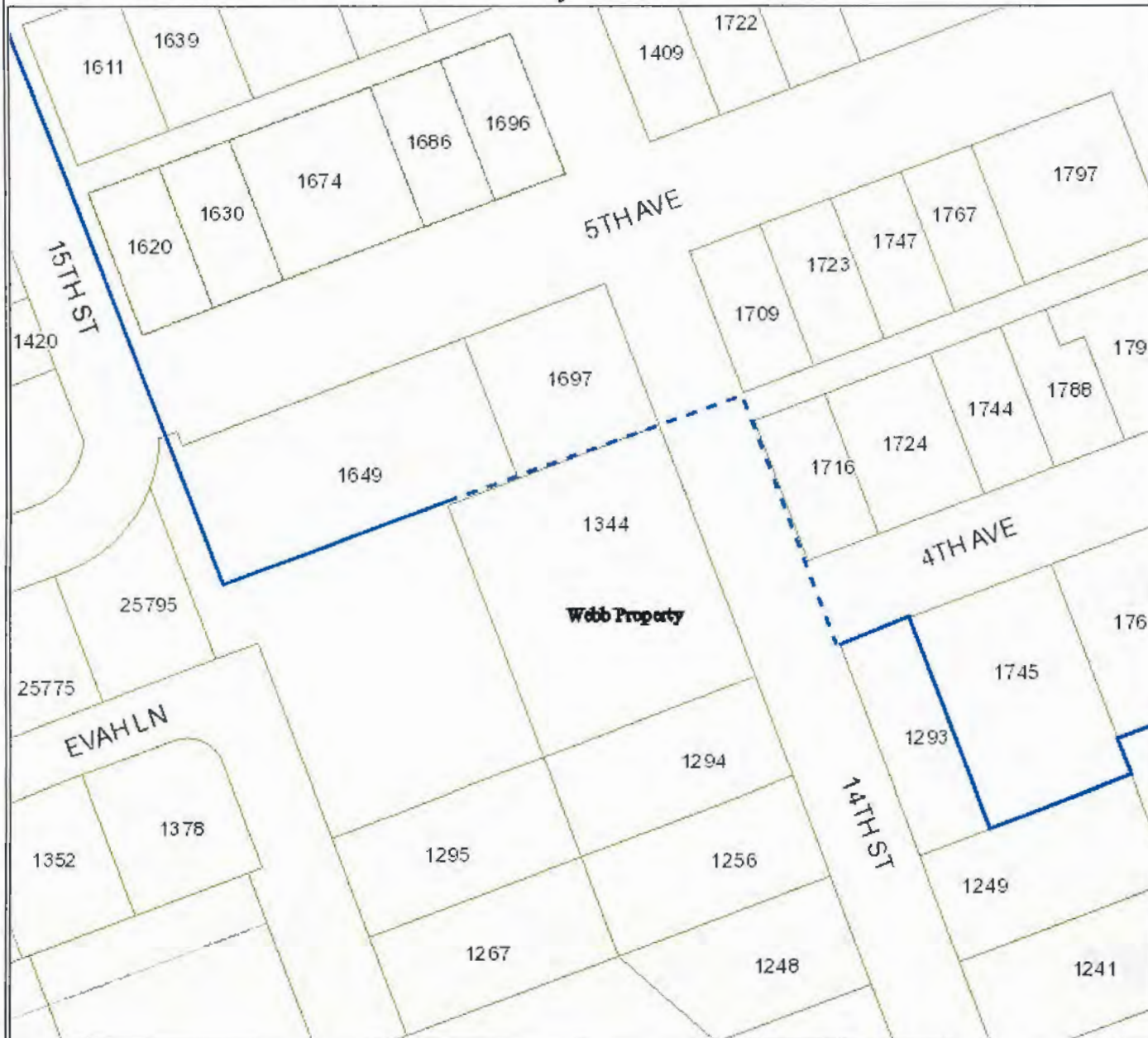
EXHIBIT A

LEGAL DESCRIPTION

Beginning at a point 100 feet Southeasterly from the Northeasterly corner of Tract 42, WILLAMETTE AND TUALATIN TRACTS, in the City of West Linn, Clackamas County, Oregon, which point is the Southeasterly corner of that certain parcel of land owned by W.L. Lunt and wife and described in Deed recorded April 12, 1920, in Volume 158, Page 65; running thence Southeasterly 180 feet; thence Southwesterly 150 feet; thence Northwesterly 180 feet; thence Northeasterly 150 feet to the place of beginning.

EXHIBIT B

Willamette Historic District Boundary As Amended



.....
Boundary As Amended



Scale 1:1,200 - 1 in = 100 ft
Scale is based on 8-1/2 x 11 paper size

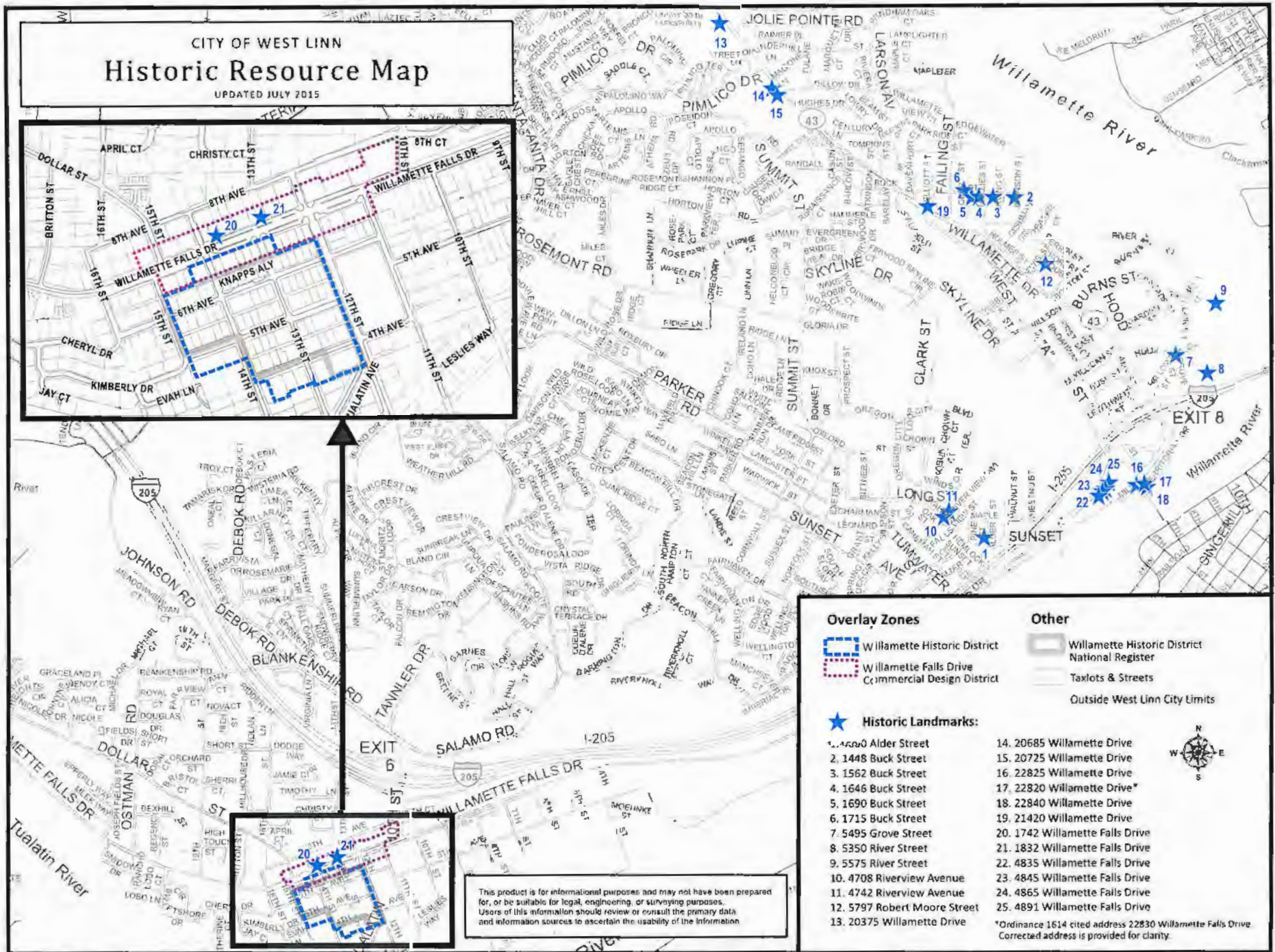


Map created by: DWYSS
Date Created: 21-Jul-15 04:05 PM

WEST LINN GIS

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Source: West Linn GIS (Geographic Information System) MapOptix.

FIGURE 1



**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
ZC-14-02**

**IN THE MATTER OF REMOVAL FROM THE
HISTORIC DISTRICT OVERLAY ZONE**

f. Background

On June 11, 1980, the West Linn City Council adopted Ordinance 1048, which included a provision that designated the Old Town Area of Willamette as the Willamette Historic District. The written description of the boundaries includes 1344 14th Street (“Property”). In 1983 the Comprehensive Plan was adopted by Ordinance 1128, and the Historic District was adopted as part of the Comprehensive Plan. The minutes from the hearings for the Comprehensive Plan adoption do not include any objections from any property owners in the proposed Historic District. Amendments to the Historic District were also made in 1985 and 1986, but throughout all of these amendments the Property remained in the Historic District. None of the records for any of these amendments include objections from property owners in the Historic District to the location of the District’s boundary.

In November 2010, the City sent a letter to the applicant welcoming them to the Willamette Historic District Overlay Zone (“Historic District”) and notifying them that alterations and remodels required approval by the City. Prior to the adoption of an ordinance modifying the historic district regulations in July 2013, the City mailed multiple postcards and a measure 56 notice to each property owner in the Historic District, including the applicant. No objection on the record was made to the inclusion of the applicant’s property in the Historic District during the adoption of Ordinance 1614 in 2013. In September 2013, a citizen called the City concerned about construction taking place at the Property in the Willamette Historic District Overlay Zone. Staff visited the property and notified the owner that work on the exterior of the property required historic district review permits before moving forward. Staff met with the owner in October 2013 at a Pre-application Conference.

Staff contacted the owner about completing the application, but it was not submitted that fall. In November 2013, the owner sent a letter demanding removal of the property from the Historic District citing ORS 197.772(3). Staff responded and sent a letter explaining the process for removal under the Community Development Code.

In May 2014, staff learned that the owner continued work on the property and completed the modifications without submitting an application or receiving approval from the Historic Review Board (“HRB”). In August 2014, the Applicant completed applications for: 1) a request to remove the historic resource designation and remove the property from the Historic District,

and 2) a design review application for a porch addition, rear dormer addition, window replacement, and garage replacement.

II. Procedural History

On October 21, 2014, the HRB denied the Applicant's request for removal from the Historic District and approved the modifications to the rear dormer subject to conditions of approval. The Applicant appealed the final HRB decision denying the design review application for the rear dormer addition and the garage replacement. In the appeal application the Applicant asked the application to be sent back to the HRB. On April 20, 2015, the applicant's attorney, Christopher Koback, submitted a letter requesting a remand of both the design review application and the zone change application to the HRB. Mr. Koback's letter stated that a remand would allow the HRB to address ORS 197.772(3). On May 11, 2015, the Council remanded AP-14-02 and DR-14-02 to the Board at the request of the Applicant, Lonny and Christine Webb, through their attorney, Christopher Koback.

At the Board's meeting on June 9, 2015, the Board held a public hearing on the Applicant's request to be removed from the Historic District Overlay Zone and the appeal of the condition of approval for the rear dormer. The hearing on the zone change recommendation was closed, and a motion was made to recommend denial of the Applicant's request to be removed from the Historic District Overlay Zone under both the state statute and the Community Development Code ("CDC"); the motion passed unanimously.

The City Council held a hearing on the zone change and removal from the Historic District Overlay Zone on July 13, 2015. The approval criteria for a zone change and removal from the Historic District Overlay Zone are found in CDC Chapter 25, Overlay Zones - Historic District; Chapter 105, Amendments to the Code and Map; and ORS 197.772(3). The hearing was conducted pursuant to the provisions of Chapter 99.

Mayor Russell Axelrod participated by phone and disclosed two ex parte contacts that occurred with the Applicant. The other three councilors all disclosed an ex parte email that was sent to them from the Mayor regarding his first ex parte conversation with the Applicant. Councilor Jenni Tan raised some concern about the Mayor's participation due to prejudgment and bias under CDC 99.180. The email the Council received from Russell Axelrod dated November 30, 2014, who was councilor elect at the time, stated that the work on the applicant's home has "met all code requirements," that the applicant's home is "incorrectly being considered historic by planning staff," and mentioned that the case should be settled before it resulted in expense and litigation. Council President Thomas Frank and Councilor Tan both expressed concern that the email statements suggested the Mayor had prejudged the application. A vote for disqualification of the Mayor was taken, and the Mayor was disqualified by a 2-1 vote. Therefore, the Mayor did not participate in the hearing.

The hearing commenced with a staff report presented by John Boyd, Planning Manager, and Christopher Koback presented for the Applicant. There was also public testimony from Alice

Richmond. The hearing on the zone change application was closed and a motion was made by Councilor Brenda Perry and seconded by Councilor Jenni Tan to tentatively approve the application for the zone change and removal from the Historic District Overlay Zone. The motion passed 2-1. The hearing was continued to July 20, 2015, and staff was directed to draft findings in support of the Council's decision for its July 20, 2015, hearing.

III. The Record

The record was finalized at the July 13, 2015, hearing. The record includes the entire file from ZC 14-02 and DR-14-02, including without limitation the supplemental records entered on May 18, 2015, and June 9, 2015.

IV. Burden of Proof

The general rule is that the applicant is required to carry the burden of meeting each and every criterion for approval of the applicant's land use application. Thus, an applicant is required to demonstrate that the application complies with the applicable approval standards, and a local government is not required to approve a noncomplying development proposal.¹

The Council finds that the City has the burden to prove that notice of the hearings to determine the boundary for the Historic District Overlay Zone was given to individual property owners in the proposed Historic District. The City must demonstrate that there is substantial evidence in the record to show that notice was given to individual property owners prior to the formation of the Historic District Overlay Zone.

V. Notice of Formation of the Historic District Overlay Zone

The record does not include the notices that were in the newspaper in 1983 or posted to notify citizens that legislative changes to the Comprehensive Plan were being considered by the Council, such as the Historic District boundary. There is evidence in the record that generalized notice was given because the minutes for the hearings that took place on October 19, 1983, Joint Planning Commission and City Council Public Hearing; November 2, 1983, City Council Final Public Hearing; November 9, 1983, Regular Meeting; November 21, 1983, Regular Meeting; November 28, 1983, Continued Meeting; indicate that citizens attended and participated. For example, four citizens made requests for zone changes at the October 19 meeting.²

In addition, the Minutes for the November 2, 1983, hearing state that Mayor McIntyre "pointed out that public notice has been made regularly regarding workshops being held on the Comprehensive Plan."³ That particular meeting was so well attended that the "Council Chambers were filled past capacity and people were out in the hall, down the stairs and out in

¹ *Adler v. City of Portland*, 25 Or LUBA 546 (1995).

² City Council Meetings 1983 Minutes, October 20, 1983, Joint P/C and C/C Public Hearing, 264-265.

³ City Council Meetings 1983 Minutes, November 2, 1983, City Council Final Public Hearing.

the parking lot waiting to get in...Madson pointed out that there were probably one hundred persons out in the hallway that couldn't hear the testimony." 265(A)-(B). The meeting had to be moved to the high school due to fire code violations. During the November 2, 1983, hearing, the City Council heard two other requests for zone changes from individuals and nine individuals spoke about the mobile home zone; however, there were no requests in the minutes to change the Historic District boundaries in 1983. 265(B)-(D).

There are generalized statements in the record stating that the hearing had been continued for other matters so that staff could "notify citizens that live in the area of site "D" of the possible zone change," but there are no specific references to providing individualized notice to property owners in the proposed historic district.⁴ There are some handwritten notes that appear to correspond to one of the City Council hearings for the 1983 Comprehensive Plan adoption, but the minutes are not dated. Those meeting notes indicate that City Staff, Mike Butts, stated that a survey was not completed of the property owners in the proposed Historic District. These same notes mention the Historic District Designation and show that at least one person, DeAnn Troutman, spoke in favor of the historic area. However, one individual speaking at the hearing does not constitute substantial evidence that the individuals in the Historic District received notice of the potential designation of their properties.

Council finds that the only notices for Historic District Boundary changes are the posted and published notices associated with the 1986 amendments to the Comprehensive Plan and the associated affidavits of publication.⁵ These notices are generalized notices for legislative action, and there is no affidavit of posting. There is no list of property owners or affidavit of notice and mailing from City staff to verify who, if anyone in the Historic District, notice of these hearings was mailed to, which would be required today under Measure 56 and public records retentions laws. The record does not contain clear evidence of notice; show that the actual owner of the property was aware of the proceedings; or that anyone in the proposed Historic District refused or accepted the designation.

The Council finds that there is not substantial evidence in the record to conclude that the property owners in the Historic District received individual notice during the 1983 Comprehensive Plan adoption and designation of the Historic District.

VI. Findings of Fact

- 1) The Background and Procedural History set forth above are true and correct.
- 2) The Applicants are Lonny and Christine Webb, and they were represented by their attorney, Christopher Koback, on the zone change recommendation.
- 3) The Council finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record.

⁴ City Council Meetings 1983 Minutes, November 28, 1983, Continued Meeting, 271.

⁵ MISC-86-06 Amendment Comprehensive Plan and Development Code Changes, 22-24, 44-45.

VII. Findings and Determinations

The Council concludes that it was not necessary for the Applicant to demonstrate compliance with the approval criteria for removal from the Historic District in CDC Chapter 25 or ORS 197.772 because the City did not meet its burden of proof to demonstrate that specific notice was given to the property owner at the time of designation in 1983. Therefore, the Council finds that it is not required to make findings regarding the CDC Chapter 25 criteria or ORS 197.772.

VIII. Order

Based on the Burden of proof, the Findings of Fact, and the lack of substantial evidence of notice in the whole record, the City Council approves the Applicant's request pursuant to ZC-14-02 to be removed from the Historic District Overlay Zone.



THOMAS FRANK, COUNCIL PRESIDENT
WEST LINN CITY COUNCIL

7/20/15

DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this 21st day of July, 2015.

Therefore, this decision becomes effective at 5 p.m., August 11, 2015.