

ORDER No. 2007-0008

AN ORDER APPROVING AGREEMENT BETWEEN THE CITY AND THE PROPERTY OWNER OF THE BUILDING LOCATED AT 809 EAST FIRST STREET, NEWBERG, OREGON WHICH PROVIDES FOR CHANGES IN THE PROCEDURE FOR IMPLEMENTATION FOR HISTORIC OVERLAY ZONE AS IT APPLIES TO THE BUILDING, AGREEMENT TO CONSENT TO THE HISTORIC LANDMARK OVERLAY ZONE, AND WAIVER OF ANY MEASURE 37 CLAIMS.

RECITALS:

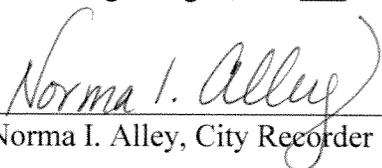
1. The building at 809 East First Street was given an historic landmark designation in 1991 pursuant to Ordinance No. 91-229.
2. Robert F. Hurford (Owner) is owner of the building and has been in continuous ownership of the building since the 1970's.
3. ORS 192.772 allowed property owners to remove the historic designation if "imposed" on the property.
4. The owner has requested that the historic designation be removed from the property. The owner met with the City staff and presented his request that the designation be removed and/or that the property did not warrant the designation.
5. The City staff responded by letter on August 17, 2007. The City staff concluded that the building does have historic significance and that it is important to the downtown area of Newberg.
6. The owner has not raised any Measure 37 claim, however due to the continuous ownership of the building and the fact that the regulation (historic designation) was imposed in 1991, there is a potential for a Measure 37 claim which the City wishes to resolve.
7. City staff and the Owner have met and discussed an agreement that would serve the purposes of both parties. The agreement is attached as Exhibit "A."
8. The City held a hearing on October 1, 2007, to consider adoption of the agreement which would affect the historical overlay zone as applied to this building.

THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. After hearing testimony and receiving the recommendation of the City staff, the City Council adopts the agreement which is attached as Exhibit "A" to this Order and by adoption authorizes the changes in process for the historic overlay zone code provisions as they apply to the building located at 809 East First Street, Newberg, OR.
2. The city manager is delegated and authorized to execute the agreement on behalf of the City and further to negotiate, amend, or revise provisions of the agreement before initial execution that are necessary and advisable to enact the intent of the agreement. The agreement will be approved as to form and content by the city attorney.
3. The Council makes the following findings of fact pursuant to adoption of this Agreement:
 - a. All the recitals are adopted as findings of fact.
 - b. It serves the purpose of the City and the purpose of the historic overlay zone to preserve for the community as much as possible the historic nature of the building located at 809 East First Street.
 - c. The property owner could request the historic designation to be removed and might be able to require the City to remove the designation.
 - d. This agreement provides for continuing protection of the historic nature of the building and meets the owner's desires for an efficient process.
 - e. The owner has not asserted a Measure 37 claim, and the City does not admit that the owner has a valid Measure 37 claim. However, the potential for a Measure 37 claim does exist and by the terms of the agreement that claim is waived.
 - f. The agreement is in the best interest of the City in order to maintain the intent of having the historic overlay designation remain on the property and would best serve the interest of the public in maintaining the landmark.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: October 2, 2007.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of October, 2007.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of October, 2007.



Bob Andrews, Mayor

Exhibit "A"
to Order No. 2007-0008
(total pages: 4)

AGREEMENT
On Historical Landmark Designation

This Agreement is entered into on October ____, 2007, by authority of Order No. _____ between Robert F Hurford, Trustee of the Robert F. Hurford Trust (105 Sitka Avenue, Newberg, Oregon, 97132), property owner (designated in this Agreement as "**Owner**") and the City of Newberg, a municipal corporation of the State of Oregon (designated in this agreement as "**City**").

Property: Building located at 809 East First Street, Newberg, OR 97132 (Yamhill County Tax Lot 3219AA-6400), further described as Lot 8 and the eastern 20 feet of Lot 7, Block 15, Deskins' Second Addition to Newberg, Ore.

Recitals:

1. In 1991, the City Council adopted Ordinance No. 91-2290 amending the Comprehensive Plan to include the 1990 Historic Resource Inventory Update.
2. The building at 809 East First Street was given the historic landmark designation by the above-listed ordinance.
3. Robert Hurford owned the building prior to 1991 and at all times since has owned the building.
4. In 1995, the legislature passed ORS 197.772, which states that a local government shall allow a property owner to remove the historic property designation if imposed on the property.
5. In accordance with the statute noted above, Newberg has established a process whereby the property owners may request and City will consider such a removal.
6. In 2004, the voters, by initiative, passed Measure 37 giving owners of property certain rights concerning land use regulations.
7. The **Owner** has approached the **City** asking that the historic property designation be removed from his property. **Owner** would like not to have to follow the procedure established by the City for historic designation removal.
8. The **Owner** and the **City** have discussed the historic designation as well as the reasons for the property **Owner's** request.

NOW, THEREFORE, the parties agree as follows:

1. **Agreement.** The parties have reached this agreement in order to reach a compromise by which the **City** can realize its goals of maintaining the building at 809 East First Street in a condition that will retain its historical significance and characteristics, which are important to downtown Newberg. At the same time, the **Owner** will be able to economically maintain the property and meet the **Owner's** goals of maintaining the property's economic viability.

2. **Code Provisions.** Code Provisions of the Historical Overlay Zone that Apply or Do Not Apply.

A) **Do Not Apply:** The following sections of the Newberg Development Code historic overlay zone § 151.492 *Alterations, New Construction, Demolitions* **do not** apply to the building at 809 East First Street:

- 1) §151.492 (A)(2) Director review of minor alterations Type I. Additional historical type I review will *not* be required for routine maintenance and minor alterations defined under this section of the Development Code. However, all other applicable Development Code criteria will apply and building permits are required.
- 2) §151.492 (A)(3) Planning Commission Review Criteria and Guidelines Type III. Modifications to the exterior of the building will *not* be subject to this section of the Development Code that requires exterior alterations other than routine maintenance and minor alterations to be approved by the Planning Commission through a Type III procedure. However, all other applicable Development Code criteria will apply and building permits are required.
- 3) §151.494 (A) Signs. The historic overlay requirements for signage in § 151.494 will *not* apply. However, the property is subject to the sign standards in §§ 151.590 and 151.601.

B) **Do Apply:** The following sections of the Development Code with historic overlay zone will apply:

- 1) §151.492 (C) Demolition and Moving Review. The existing historic overlay zone demolition requirements will remain under this agreement.

C) **Additional Conditions.** This agreement provides for flexibility in the Development Code requirements with the following conditions:

- 1) The building at 809 East First Street will retain its designation as a local historic landmark and ranked as a secondary resource.

2) Architectural elements that characterize the building will remain with any exterior alterations. New materials may be used for repairs and modifications but as a condition, the architectural style should match the original. The prominent design elements that should remain, or if replaced or repaired match the original design, include:

- i. The second floor segmental-arched window heads with incised keystones.
- ii. The tall, narrow windows on the second floor. These window openings shall remain and no new window openings are permissible.
- iii. The projecting bracketed cornice.
- iv. The Roman brick currently exposed on the lower portion of the building.

3. Present plans of improvement. Presently, the **Owner** has submitted plans for alterations, which include certain changes to the exterior of the building. The **City** has reviewed those plans and approves the plans as submitted with the following specific elements:

- a) Second Story Windows – Energy Approved
- b) First Story Awnings
- c) Resurface Area over Barber Shop

4. Filing. This agreement shall be filed in the necessary records to indicate the zoning and the compromise concerning the **City's** Comprehensive Plan and Zoning Designation.

5. Wavier of Potential Measure 37 Claim. The **Owner** has not asserted any Measure 37 claim as it pertains to this property. The **City** does not acknowledge that any Measure 37 claim if asserted would be valid or if valid, what action the City would pursue. However, in order to resolve any potential Measure 37 claim, the owner hereby waives any right to assert any Measure 37, either known or unknown to him, and further waives any claim that such right to assert a claim is not waived because it was unknown to him at this time.

6. Consent to Historic Landmark Designation. The **Owner** consents to the historic landmark designation as a secondary resource for the building at 809 East First Street and further waives any claim to have that designation removed pursuant to ORS 197.772.

7. Interpretation of Agreement. It is the purpose of this agreement to meet the goals of allowing the **Owner** to maintain and make alterations to the building in an efficient process without having to go through formal Planning Commission review. The agreement shall be interpreted to meet this goal.

This Agreement is executed on this _____ of October, 2007, by the undersigned:

CITY OF NEWBERG

OWNER

James H. Bennett, City Manager

Robert F Hurford, Trustee

Robert F. Hurford Trust

Approved as to Form and Content:

Terrence D. Mahr, City Attorney

After Recording, Return to:
City of Newberg
City Attorney's Office
PO Box 970
Newberg, OR 97132

OFFICIAL YAMHILL COUNTY RECORDS
JAN COLEMAN, COUNTY CLERK

200721876

\$41.00



10/04/2007 01:44:19 PM

DMR-AGRDMR Cnt=1 Stn=2 ANITA
\$20.00 \$10.00 \$11.00

AGREEMENT

On Historical Landmark Designation

This Agreement is entered into on October 3rd, 2007, by authority of Order No. 2007-0008 between Robert F Hurford, Trustee of the Robert F. Hurford Trust (105 Sitka Avenue, Newberg, Oregon, 97132), property owner (designated in this Agreement as "**Owner**") and the City of Newberg, a municipal corporation of the State of Oregon (designated in this agreement as "**City**").

Property: Building located at 809 East First Street, Newberg, OR 97132 (Yamhill County Tax Lot 3219AA-6400), further described as Lot 8 and the eastern 20 feet of Lot 7, Block 15, Deskins' Second Addition to Newberg, Ore.

Recitals:

1. In 1991, the City Council adopted Ordinance No. 91-2290 amending the Comprehensive Plan to include the 1990 Historic Resource Inventory Update.
2. The building at 809 East First Street was given the historic landmark designation by the above-listed ordinance.
3. Robert Hurford owned the building prior to 1991 and at all times since has owned the building.
4. In 1995, the legislature passed ORS 197.772, which states that a local government shall allow a property owner to remove the historic property designation if imposed on the property.
5. In accordance with the statute noted above, Newberg has established a process whereby the property owners may request and City will consider such a removal.
6. In 2004, the voters, by initiative, passed Measure 37 giving owners of property

FIRST AMERICAN TITLE C 90

1/4

certain rights concerning land use regulations.

7. The **Owner** has approached the **City** asking that the historic property designation be removed from his property. **Owner** would like not to have to follow the procedure established by the City for historic designation removal.

8. The **Owner** and the **City** have discussed the historic designation as well as the reasons for the property **Owner's** request.

NOW, THEREFORE, the parties agree as follows:

1. Agreement. The parties have reached this agreement in order to reach a compromise by which the **City** can realize its goals of maintaining the building at 809 East First Street in a condition that will retain its historical significance and characteristics, which are important to downtown Newberg. At the same time, the **Owner** will be able to economically maintain the property and meet the **Owner's** goals of maintaining the property's economic viability.

2. Code Provisions. Code Provisions of the Historical Overlay Zone that Apply or Do Not Apply.

A) **Do Not Apply:** The following sections of the Newberg Development Code historic overlay zone § 151.492 *Alterations, New Construction, Demolitions* **do not** apply to the building at 809 East First Street:

- 1) §151.492 (A)(2) Director review of minor alterations Type I. Additional historical type I review will *not* be required for routine maintenance and minor alterations defined under this section of the Development Code. However, all other applicable Development Code criteria will apply and building permits are required.
- 2) §151.492 (A)(3) Planning Commission Review Criteria and Guidelines Type III. Modifications to the exterior of the building will *not* be subject to this section of the Development Code that requires exterior alterations other than routine maintenance and minor alterations to be approved by the Planning Commission through a Type III procedure. However, all other applicable Development Code criteria will apply and building permits are required.
- 3) §151.494 (A) Signs. The historic overlay requirements for signage in § 151.494 will *not* apply. However, the property is subject to the sign standards in §§ 151.590 and 151.601.

B) **Do Apply:** The following sections of the Development Code with historic overlay zone will apply:

- 1) §151.492 (C) Demolition and Moving Review. The existing historic overlay

zone demolition requirements will remain under this agreement.

C) **Additional Conditions.** This agreement provides for flexibility in the Development Code requirements with the following conditions:

- 1) The building at 809 East First Street will retain its designation as a local historic landmark and ranked as a secondary resource.
- 2) Architectural elements that characterize the building will remain with any exterior alterations. New materials may be used for repairs and modifications but as a condition, the architectural style should match the original. The prominent design elements that should remain, or if replaced or repaired match the original design, include:
 - i. The second floor segmental-arched window heads with incised keystones.
 - ii. The tall, narrow windows on the second floor. These window openings shall remain and no new window openings are permissible.
 - iii. The projecting bracketed cornice.
 - iv. The Roman brick currently exposed on the lower portion of the building.

3. **Present plans of improvement.** Presently, the **Owner** has submitted plans for alterations, which include certain changes to the exterior of the building. The **City** has reviewed those plans and approves the plans as submitted with the following specific elements:

- a) Second Story Windows – Energy Approved
- b) First Story Awnings
- c) Resurface Area over Barber Shop

4. **Filing.** This agreement shall be filed in the necessary records to indicate the zoning and the compromise concerning the **City's** Comprehensive Plan and Zoning Designation.

5. **Wavier of Potential Measure 37 Claim.** The **Owner** has not asserted any Measure 37 claim as it pertains to this property. The **City** does not acknowledge that any Measure 37 claim if asserted would be valid or if valid, what action the City would pursue. However, in order to resolve any potential Measure 37 claim, the owner hereby waives any right to assert any Measure 37, either known or unknown to him, and further waives any claim that such right to assert a claim is not waived because it was unknown to him at this time.

6. **Consent to Historic Landmark Designation.** The **Owner** consents to the historic landmark designation as a secondary resource for the building at 809 East First Street and further waives any claim to have that designation removed pursuant to ORS 197.772.

ORDINANCE NO. 91-2290

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN INVENTORY OF NATURAL AND CULTURAL RESOURCES BY ESTABLISHING A HISTORIC RESOURCES ELEMENT WHICH INCLUDES THE FINAL PLAN INVENTORY OF HISTORIC RESOURCES.

WHEREAS, The City of Newberg completed an historic resources inventory in 1985 and a re-evaluation of that inventory in 1990; and

WHEREAS, Statewide Planning Goal 5 requires that historic resources inventories be completed and that programs be developed to protect significant resources.

NOW, THEREFORE, the Council of the City of Newberg ordains as follows:

Section 1. The Inventory of Natural and Cultural Resources adopted by Ordinance 1967 shall be amended by replacing sections entitled "Historic Areas" and "Cultural Areas" (pages 56-63) with the following statement: "Historic areas and Cultural areas are addressed in the Historic Resources Element of the Comprehensive Plan Inventory."

Section 2. The Inventory of Natural and Cultural Resources shall be amended to include a new Historic Resources Element which is attached as Exhibit A. The list of historic resources in Appendix B of the Historic Resources Element shall be considered the Final Plan Inventory of Historic Resources.

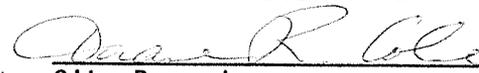
Section 3. The 1985 Inventory of Historic Resources and the 1990 update and evaluation of the inventory are hereby adopted as supporting information for the Comprehensive Plan.

Section 4. Severability Clause. If any article, section, subsection, subdivision, phrase, clause, sentence, or work in this ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance, but shall be confined to the article, section, subsection, subdivision, clause, phrase, sentence or word so held invalid or unconstitutional.

Section 5. The Newberg City Council adopts the findings of fact which shall be made a part of this ordinance and are attached as Exhibit B.

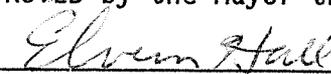
PASSED by the City Council of the City of Newberg this 19th day of February, 1991, by the following votes:

AYES: 6 NAYS: 0 ABSTAIN: 1 ABSENT: 1



City Recorder

APPROVED by the Mayor this 19th day of February, 1991.



Elvern Hall - Mayor