

**BEFORE THE LAND USE HEARINGS OFFICER
OF THE CITY OF GRESHAM, OREGON**

Regarding an application by East County Historical)	<u>FINAL ORDER</u>
Organization for approval of alterations to the exterior)	File No.
of a historic landmark, the Zimmerman Buttery, at 17111)	HLA 19-26000290
NE Sandy Boulevard in the City of Gresham, Oregon)	(Zimmerman Buttery)

A. SUMMARY

1. The applicant, East County Historical Organization (“ECHO”), requests approval to remove the old dairy building (known as “the Buttery building”), a designated historic landmark located on the property of the Zimmerman House/Zimmerman Heritage Farm Campus located on a 5.98-acre parcel at 17111 NE Sandy Boulevard; also known as tax lots 1400 and 1900, Section 19C, Township 1 South, Range 3 East, Willamette Meridian, Multnomah County, Oregon (the “site”).

a. The site was used as a dairy farm and is currently used for historical education and interpretation. The Buttery building was built constructed around 1890 and was used to store and process milk produced on the site and to make and sell cheese and butter. The same family lived in the farmhouse on the site from the 1870s until 1992. The house was listed on both the National Register of Historic Places and the Gresham Historic and Cultural Landmarks List in 1986. The Buttery building was integral to the use of the dairy farm is called out as contributing to the site’s historic significance. The owners bequeathed the site to the City of Gresham and the Fairview-Rockwood-Wilkes Historical Society (“FRW”).¹ These organizations developed a master plan for the site in 1999.

2. The Buttery building has been deteriorating for many years and collapsed in 2016. The chimney and remnants of the building were further demolished later that year when a tree fell on them. ECHO would like to remove the remains of the building. ECHO proposes to use an archeological consultant to document the building remnants during removal.

3. Additional basic facts about the site and surroundings and applicable approval standards are provided in the Staff Report and Recommendation to the Hearings Officer dated September 26, 2019 (the “Staff Report”).

4. City of Gresham Hearings Officer Joe Turner (the “hearings officer”) conducted a public hearing to receive testimony and evidence about the application. City staff recommended approval of the application subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions with certain exceptions The principal issues in dispute include the following:

a. Whether the applicant is required to complete demolition/removal of the Buttery building within one year;

¹ The former FRW is now the East County Historical Organization (“ECHO”).

b. Whether the site is considered an “archaeological site” under state or federal law;

c. Whether the applicant is required to document the archeological and/or historical features of the Buttery building during demolition/removal of the building; and

d. Whether the City has the authority to require that the applicant rebuild the Buttery building prior to rebuilding any other buildings on the site.

5. Based on the findings provided or incorporated herein, the hearings officer concludes that the applicant sustained the burden of proof that the application does or can comply with the applicable approval standards, subject to conditions. Therefore the hearings officer approves the application in this case, subject to the conditions of approval listed at the conclusion of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this application on October 3, 2019. At the beginning of the hearing, the hearings officer made the declarations required by ORS 197.763. That testimony and evidence, including an audio recording of the public hearing and the casefile maintained by the City of Gresham Urban Design & Planning offices (the “City”), are included herein as exhibits, and they are filed at the City. The hearings officer disclaimed any *ex parte* contacts with interested persons, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. Assistant Development Planner Sarale Hickson summarized the Staff Report and her Memorandum to the Hearings Officer dated October 3, 2019 (Exhibit 2).

a. She noted that the house on the site was listed on both the National Register of Historic Places and the Gresham Historic and Cultural Landmarks List in 1986. The Buttery building was integral to the use of the dairy farm is called out as contributing to the site’s historic significance. The Buttery building has been deteriorating for many years and collapsed in 2016. The chimney and remnants of the building were further demolished later that year when a tree fell on them. The building is no longer salvageable.

b. With this application, the applicant proposes to remove the rubble from the collapsed building in order to make the site safe and to identify any potentially significant archaeological material.

c. The City of Gresham and the Fairview-Rockwood-Wilkes Historical Society (the “FRW”) developed a master plan for the site in 1999, which calls for reconstruction of the Buttery building. The applicant plans to reconstruct the Buttery building at some point in the future. It is unlikely that any of the original building materials can be salvaged and reused in the planned reconstruction.

d. The Oregon State Office of Historic Preservation (“SHPO”) recently notified the City that the Buttery building is deemed to be an archaeological site, based

on its size and condition. Therefore, she requested the hearings officer modify the findings and conditions of approval as set out in Exhibit 2.

e. Pursuant to Section 11.0105(A) of the Community Development Code (the "CDC"), the Hearings Officer's decision in this case will expire within one year from the date of the decision, unless the applicant receives approval of an extension pursuant to CDC 11.0105(A)(5) and 11.0106. The applicant must obtain a demolition, building, or other permits required by the City Building Department before the Hearings Officer's decision expires. In addition, the rubble from the collapsed building is an attractive nuisance and a potential hazard to the public. Therefore, the applicant should be required to remove it from the site as soon as possible in order to alleviate the hazard.

i. The applicant must consult with the City Building Department to determine whether what permit(s) is required to remove the building rubble from the site.

ii. A demolition permit is "finalized" after the demolition is completed. Therefore, condition of approval 6 does not require that the applicant include a copy of the archaeological inventory/report with the demolition permit application. The applicant must submit the inventory/report after demolition is completed in order to finalize and close the permit.

f. She requested the hearings officer modify condition of approval 4 to require a historic or archaeological inventory/report. If SHPO finds that the site is an archaeological site, the applicant should be required to follow SHPO's procedures. If it is not an archaeological site, the applicant should be required to submit a historic inventory/report of the Buttery building. Such a report is necessary to document the history of the Buttery building and to facilitate future reconstruction.

g. The 1999 master plan for the site lists the Buttery building as the first building to be rebuilt on the site, for use as a visitor reception and ticketing area, education demonstrations/presentations, and a small museum store. The master plan is a contract between the applicant and the City. Therefore, condition of approval 7 requires that the Buttery building be the first building to be reconstructed on the site. Ms. Hickson requested the hearings officer modify condition 7 to require reconstruction of the Buttery building unless the City approves a modification to the master plan.

3. Jana Brey and Twila Mysinger, volunteers with the East County Historical Organization, testified on behalf of the applicant.

a. Ms. Brey summarized her written testimony, Exhibits 1 and 3. She argued that the site should not be considered an archaeological site. A structure is not considered an archaeological site unless it has been in ruins for more than 50 years under state law and 75 years under federal law. She requested the applicant be allowed two years for removal of the building debris. ECHO is a volunteer organization with limited funds. The remains of the Buttery building are currently enclosed by a fence to prevent trespass and ensure public safety.

b. Ms. Mysinger testified that the applicant plans to rebuild the Buttery building eventually. However, the applicant plans to rebuild a bunkhouse building on the

site first, as that building will house a larger gift shop and other uses that will generate additional revenue which the applicant can use to fund other historic preservation and restoration projects on the site. The applicant could potentially utilize the reconstructed Buttery building as a gift shop, but the small size of the building would limit its use.

i. She noted that condition 6 requires that the applicant provide the City with a copy of the archaeological inventory/report before the demolition permit is finalized. However, the archaeological inventory/report will be created during the demolition process. Therefore, the applicant cannot include the report in the application for a demolition permit.

ii. She argued that the master plan is merely a use agreement for the site. It does not specify which buildings are to be reconstructed first.

4. Senior City Planner Mary Phillips testified that the overall goal is to preserve the historic elements on the site. If reconstruction of the bunkhouse building will generate revenue that the applicant can use to fund maintenance and restoration than that use should be allowed. However, that would require modification of the master plan.

C. DISCUSSION

1. The hearings officer finds that the Staff Report, as modified by Exhibit 2, identifies all of the applicable approval standards and contains the requisite findings that the application does or can comply with those standards subject to conditions of approval. The hearings officer adopts the affirmative findings in the Staff Report, as modified by Exhibit 2, as his own except to the extent that those findings conflict with the findings and conclusions in this final order.

2. Pursuant to CDC 11.0105(A), the approval in this Final Order is valid for one year, unless an extension is approved pursuant to CDC 11.0105(A)(5) and 11.0106. The applicant must obtain any required permits for demolition/removal of the remains of the Buttery building prior to expiration of this Final Order. Condition of approval 1 should be modified to that effect.

a. The applicant will be required to comply with the completion deadlines for all permits required for the demolition/removal of the Buttery building. The hearings officer has no authority to extend these deadlines through this approval.

3. There is a dispute as to whether or not the site is considered an “archaeological site” under state or federal law. However, the parties failed to provide any evidence or citations to applicable regulations in support of their assertions. The hearings officer finds that some form of documentation, archaeological or historic, is warranted in order to record the physical and historic character of the structure, including the size, design, location, materials used, etc., in order to ensure that any future reconstruction is consistent with the original building. This is also consistent with the Zimmerman Heritage Farm Master Plan, which calls for dismantling, recording, and storage of the Buttery building for future reconstruction. *See* p. 93 of Exhibit F. Condition of approval 4 should be modified to that effect.

a. Condition 4 requires that the applicant submit a summary of the proposed procedures for documentation of the archeological or historical features of the Buttery building during the demolition/removal process. Condition 6 requires that the applicant provide the City with a copy of the final archeological/historical report documenting any archeological or historical information discovered during the demolition/removal process. Submittal of the final archeological/historical report is required after demolition/removal is completed, prior to finalization of the permit(s).

4. The applicant must consult with the City Building Department to determine what permits, if any, are required for demolition/removal of the remains of the Buttery building from the site. This is required by condition 2. In addition, the plans and methods for removal and historic and/or archaeological documentation must be approved by the City Planning Department. This is required by condition 3.

5. The Zimmerman Heritage Farm Master Plan is described as:

[A] comprehensive vision and a long-range, phased implementation plan for cultural heritage education and complementary recreation facilities, programs, and special events and activities.

The goal of [the] master plan is to provide a “road map” for creating a cultural heritage museum and community park that will become an enduring benefit to the community.

p. 5 of Exhibit F.

6. The master plan expressly calls for dismantling of the Buttery building. *See* p. 93 of Exhibit F. The master plan also calls for eventual reconstruction of the Buttery building, the bunkhouse, and other structures. *See* pp. 73-74 of Exhibit F. The master plan does not appear to specify which building(s) will be restored/reconstructed first and the City failed to identify any other authority for requiring reconstruction of the Buttery prior to other buildings that are also proposed for the site. Therefore, the hearings officer finds that condition of approval 7, which requires reconstruction of the Buttery building as the first building for reconstruction on the site, should be modified to delete the requirement that this building be reconstructed first, because the City failed to identify any express authority for this condition.

a. The hearings officer has no authority to interpret the requirements of the master plan. If the City believes that the master plan requires reconstruction of the Buttery building first, the City can seek enforcement of the master plan through the courts.

D. CONCLUSIONS

Based on the findings provided or incorporated herein, the hearings officer concludes that the applicant sustained the burden of proof that the application does or can comply with the applicable approval standards, subject to conditions. Therefore, the hearings officer approves the application in this case, subject to the conditions of approval listed below.

E. ORDER

Based on the findings and conclusions adopted or incorporated herein, the hearings officer hereby approves HLA 19-26000290 (Zimmerman Buttery) subject to the following conditions of approval:

1. As required by CDC 11.0105(A), the applicant shall obtain all necessary permits for removal of the building within one year of the date of the decision, unless an extension is approved pursuant to CDC 11.0106.
2. The applicant must consult with the building department and obtain any permits required before any demolition/removal work is performed.
3. All work shall be reviewed by the Building and Planning Departments, any appropriate demolition or building permits shall be obtained, and plans and methods approved by the manager before the work is undertaken.
4. Prior to undertaking any work on the Buttery building, the applicant shall provide documentation from the State Historic Preservation Office ("SHPO") stating whether or not the site qualifies as an archeological site. If the site is an archeological site, then an archeological inventory and report is required. If the site is not an archeological site, then a historic inventory and report is required. The scope of the archeological/historical work/contract shall be provided to the manager with any permit application.
5. All materials of historic value, including but not limited to any building materials able to be reused in the reconstruction of the building, shall be catalogued and made part of the Zimmerman House collection.
6. A copy of the archeological/historical inventory/report shall be provided to the City of Gresham before the demolition or other required permit(s) is finalized.
7. Reconstruction of the Buttery building shall be based on the historical record including photographs and the archeological inventory. Where possible, any salvageable materials shall be included in the rebuilt buttery.
8. The applicant shall retain the footings of the Buttery building if they are salvageable and maintain them in place to define the footprint of the building.

DATED this 18th day of October, 2019



Joe Turner, Esq., AICP
City of Gresham Land Use Hearings Officer