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## EXHIBIT 2 - STAFF REPORT

**DATE:** January 23, 2019  
**TO:** Historic Landmarks Committee Members  
**FROM:** Chuck Darnell, Senior Planner  
**SUBJECT:** HL 16-18 – 1206 NE 10<sup>th</sup> Avenue

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### **Report in Brief:**

This is the consideration of a request to remove a historic resource from the Historic Resources Inventory. The subject property is listed on the McMinnville Historic Resources Inventory as an Environmental resource (resource number D1041).

Historic resources are defined as any site, structure, building, district, or object that is included on the Historic Resources Inventory.

The Historic Resources Inventory is defined as follows:

**Historic Resources Inventory** - The initial inventory includes the resources which were evaluated and ranked by the McMinnville Historic Landmarks Committee. The inventory incorporates the surveys and inventories conducted in 1976, 1980, and 1983/84 and resources which may be included by action of the Historic Landmarks Committee under the provision of Section 17.65.030 of this chapter. The resources included in the inventory are classified as follows:

- A. Distinctive: Resources outstanding for architectural or historic reasons and potentially worthy of nomination to the National Register of Historic Places;
- B. Significant: Resources of recognized importance to the City due to historical association or architectural integrity, uniqueness, or quality;
- C. Contributory: Resources not in themselves of major significance, but which enhance the overall historic character of the neighborhood or City. Removal or alteration would have a deleterious effect on the quality of historic continuity experienced in the community; or
- D. Environmental: This category includes all resources surveyed that were not classified as distinctive, significant, or contributory. The resources comprise an historic context within the community.

The McMinnville Municipal Code (MMC) describes the Historic Resources Inventory and the process for requesting any addition, deletion, or change to the inventory. Section 17.65.030(A) of the MMC gives the Historic Landmarks Committee the authority to review any addition, deletion, or change to the inventory, and Section 17.65.030(F) provides the specific review criteria to be considered in any Historic Resources Inventory deletion request.

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### *Attachments:*

*Historic Resources Inventory Deletion Request (filed as Application HL 16-18)*  
*Decision Documents for Application HL 16-18*

**Background:**

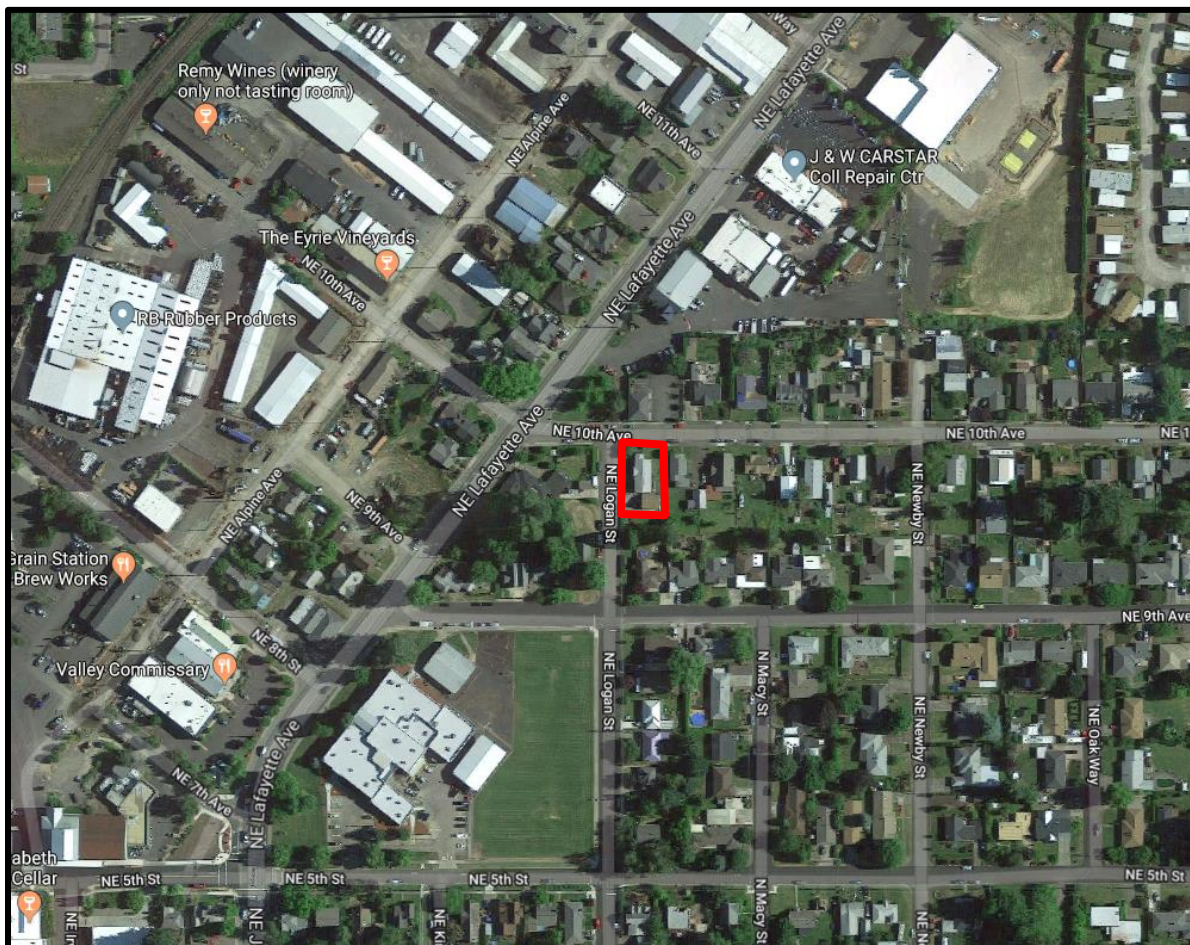
Eric Wolf and Karl-Heinz Wolff, on behalf of property owners Roger and Cheri Pemberton, submitted a written request to delete and remove an existing historic resource from the Historic Resources Inventory. The historic resource is a residential building that is listed on the McMinnville Historic Resources Inventory as an Environmental resource (resource number D1041). The subject property is located at 1206 NE 10<sup>th</sup> Avenue, and is more specifically described as Tax Lot 1800, Section 21AB, T. 4 S., R. 4 W., W.M.

The historic designation for this particular historic resource is associated with the structure on the property. The statement of historical significance and description of the property, as described in the Historic Resources Inventory sheet and as documented during the original survey of the property in December 1983, is as follows:

This low-gabled one-story bungalow has wide eaves with exposed rafters. The gabled porch is supported on square columns at its corners. The porch base is concrete. The north and west façade is resided in plywood while the east and portions of the north façade have asbestos shingle siding [sic] over the original horizontal siding. The windows are aluminum replacement.

Section 17.65.030(B) of the MMC requires that the Historic Landmarks Committee review and approve any request for an addition, change, or deletion to the Historic Resources Inventory.

The current location of the historic resource is identified below (outline of property is approximate):



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**Discussion:**

The photo from the time of the survey of the building that led to it being listed on the Historic Resources Inventory, as shown in the Historic Resources Inventory sheet, is provided below:



A more recent photo of the building as it exists today, taken from the same general location and angle as the original survey photo from 1983, can be seen below:

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The Historic Landmarks Committee's responsibility regarding this type of application is to hold a public meeting to review the request to delete the historic resource from the Historic Resources Inventory. Property owner notices were provided to owners of property within 300 feet of the subject site, consistent with Section 17.65.070 of the McMinnville Municipal Code. During the public meeting, the Historic Landmarks Committee Chair may provide an opportunity for public testimony on the application, should any member of the public wish to testify.

### **Historic Resources Inventory Deletion Review**

The McMinnville Municipal Code provides multiple paths and processes for proposed changes to the Historic Resources Inventory, depending on the exact change being requested or the reasoning for the request. Specifically, any additions or changes to the Historic Resources Inventory are subject to Section 17.65.030(C) as follows:

- C. The Historic Landmarks Committee shall base each decision regarding additions or changes to the inventory on the following criteria:
  1. History. The resource is associated with significant past events, persons, organizations, trends, or values which were important at the city, county, state, or national level. The age of the resource relative to other local development contributes to its historic significance;

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2. Style/Design. The resource is representative of a particular style or a type of construction. The uniqueness of the resource or its quality of composition, detailing, or craftsmanship contribute to its design significance. The resource was designated or constructed by a craftsman, contractor, designer, or architect of local, state, or national importance;
3. Integrity. The resource retains original design elements, materials, and character with relatively minor alterations, if any; and
4. Environment. The resource contributes to the character or continuity of the street or neighborhood.
5. Consistency with the National Register Criteria for Evaluation as follows:
  - a. The resource is associated with events that have made a significant contribution to the broad patterns of our history; or
  - b. The resource is associated with lives of significant persons in our past; or
  - c. The resource embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or
  - d. The resource has yielded or may be likely to yield, information important in history or prehistory; and
6. The designation of the resource is consistent with the priorities described in the historic preservation plan.

However, the request before the Historic Landmarks Committee is to delete a resource from the Historic Resources Inventory. Any deletion to the Historic Resources Inventory is subject to Section 17.65.030(F) as follows:

- F. Except as provided in Section 17.65.030 (E), the Historic Landmarks Committee shall base each decision regarding deletions from the inventory on the following criteria:
  1. The resource has lost the qualities for which it was originally recognized; or
  2. Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing; or
  3. The Building Official declares that the resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

In addition to those processes, the MMC also describes a process in which the City and Historic Landmarks Committee must remove a historic resource from the Historic Resources Inventory if it can be shown that the designation was imposed on the property and the owner at the time of designation. This process is described in Section 17.65.030(E), and will be discussed in more detail below, as the applicant is requesting a removal of the resource by this process as well as the standard deletion process described in Section 17.65.030(F).

As described above, in reviewing a request a deletion from the Historic Resources Inventory, the Historic Landmarks Committee must base its decision on the following criteria, as described in Section 17.65.030(F) of the MMC:

1. The resource has lost the qualities for which it was originally recognized; or

The original designation of the residential building on the Historic Resources Inventory was related to the architecture and historic features that were in place on the structure at the time of survey in December 1983. Those architectural features were described in more detail above. The applicant is arguing that the existing building no longer contains those features that led to it being designated on the Historic Resources Inventory due to alterations that have occurred since that time. Staff would note that the

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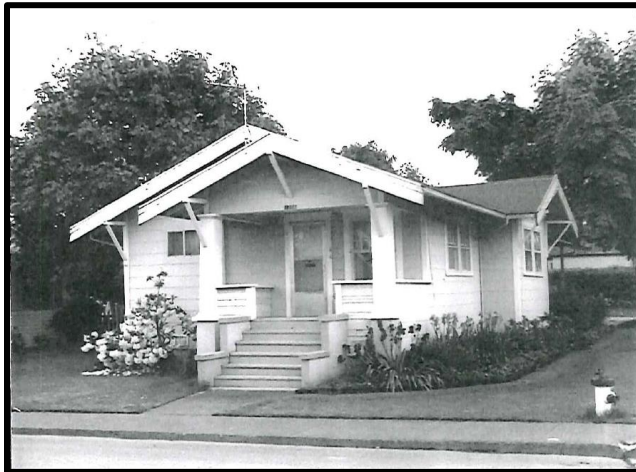
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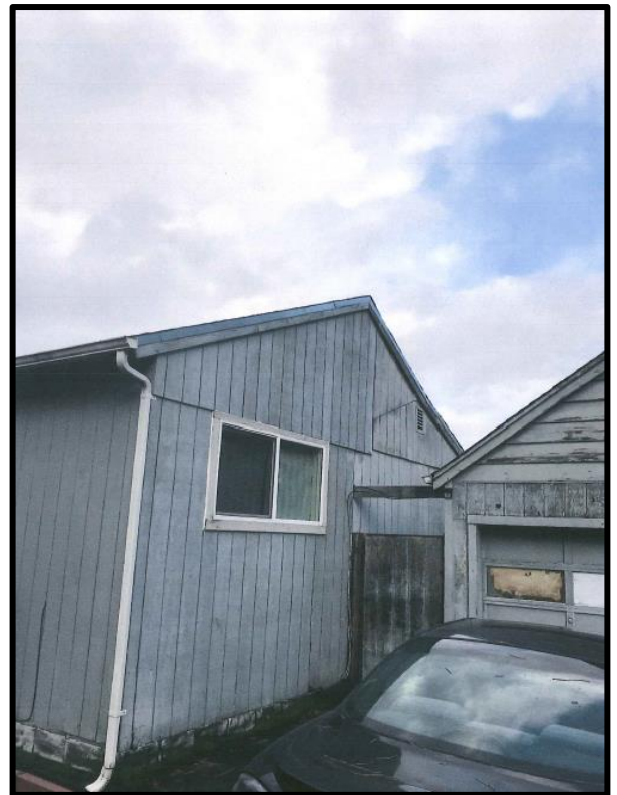
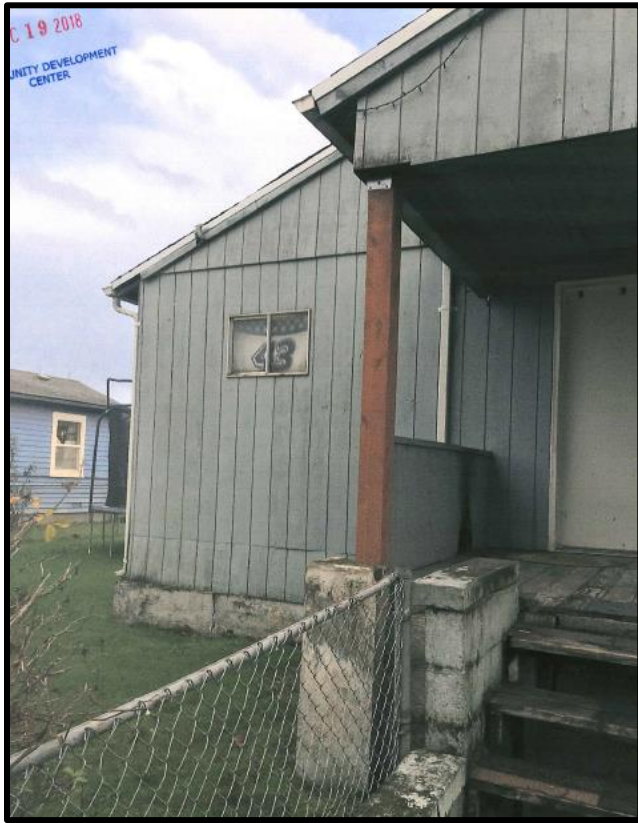
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resource was designated as an Environmental resource, which is the lowest level and tier of classification on the Historic Resources Inventory. Resources that are designated as Contributory or Environmental resources have historically, and still are not, subject to any specific design standards or historic preservation review criteria. Therefore, alterations can occur to the structure without any additional review, other than what is required for building permit and general zoning requirements. In this scenario, it is clear that multiple alterations have occurred over time.

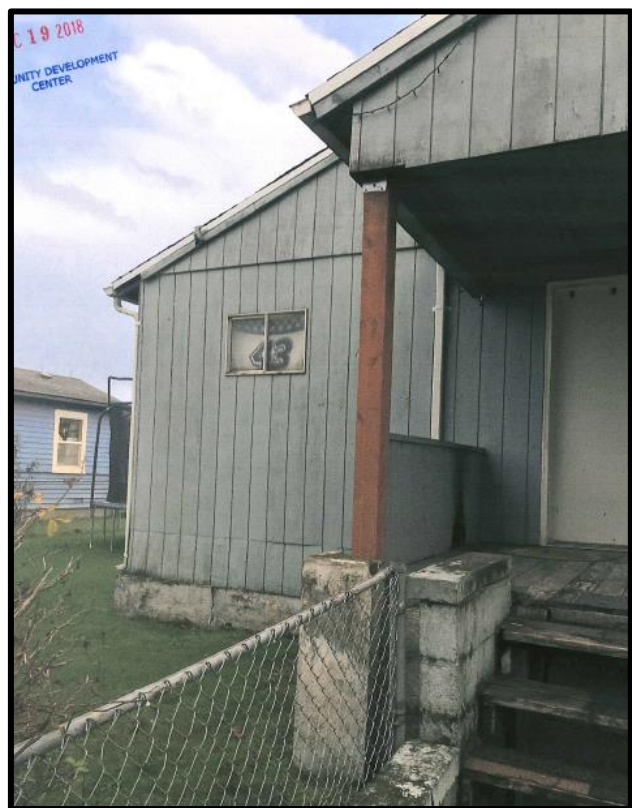
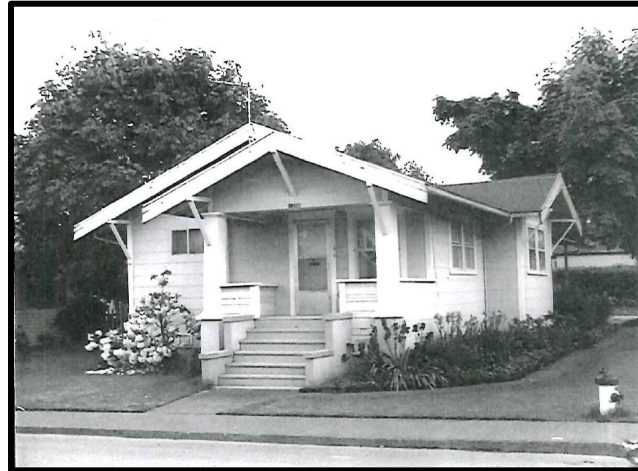
The statement of historical significance and description of the property, as described in the Historic Resources Inventory sheet and as documented during the original survey of the property in December 1983, describes a number of architectural elements and features that led to the structure being designated. Those are described individually below, along with the applicant’s descriptions of changes that have occurred and photos showing those changes.

The statement of historical significance described the structure as “This low-gabled one-story bungalow has wide eaves with exposed rafters.” The applicant has stated that the exposed rafters have been removed, and it is clear that the wide eaves have also been removed from the main roof structure, the porch, and the bump-out on the west façade. Photos of the absence of these features are provided below:





The statement of historical significance described the structure as having a “gabled porch [...] supported on square columns at its corners.” The statement also states that “the porch base is concrete.” The applicant has stated that the “access to the front door is now comprised of wood steps and CMU blocks instead of previous concrete steps”. Photos of the absence of these features are provided below:



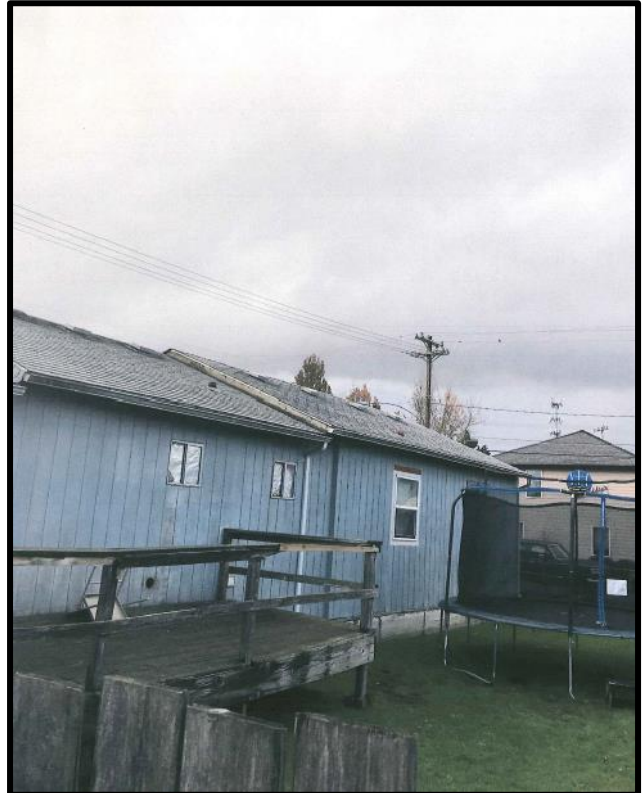
The statement of historical significance also describes the structure as follows: “The north and west façade is resided in plywood while the east and portions of the north façade have asbestos shingle siding [sic] over the original horizontal siding.” The applicant has stated that the “original horizontal

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siding and plywood have been replaced with T-1-11 siding”. Photos of the absence of these features are provided below:



Based on the alterations and the removal of once historic features, staff concurs with the applicant and believes that the resource has lost the qualities for which it was originally recognized and designated on the Historic Resources Inventory.

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2. Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing; or

Staff believes that the historic resource did satisfy the applicable criteria for designating the resource on the Historic Resources Inventory in 1983 and in 1987 when the City's Historic Preservation Ordinance (Ordinance No. 4401) was adopted. However, due to the alterations that have occurred, the resource, if re-surveyed today, would no longer satisfy the criteria for recognition as a resource. The original criteria for designation as a historic resource are similar to those that still regulate changes or additions to the Historic Resources Inventory. Those criteria are as follows:

1. History. The resource is associated with significant past events, persons, organizations, trends, or values which were important at the city, county, state, or national level. The age of the resource relative to other local development contributes to its historic significance;
2. Style/Design. The resource is representative of a particular style or a type of construction. The uniqueness of the resource or its quality of composition, detailing, or craftsmanship contribute to its design significance. The resource was designated or constructed by a craftsman, contractor, designer, or architect of local, state, or national importance;
3. Integrity. The resource retains original design elements, materials, and character with relatively minor alterations, if any; and
4. Environment. The resource contributes to the character or continuity of the street or neighborhood.

The statement of historical significance and description of the property, as described in the Historic Resources Inventory sheet and as documented during the original survey of the property in December 1983, describes a number of architectural elements and features that led to the structure being designated. There is no specific reference to any significant past event, person, organization, or trend which were important at the city, county, state, or national level.

The original style and design of the resource was a bungalow style, with architectural features of historic value such as wide eaves, exposed rafters, gabled porch, and square columns at the corners of the front porch. Those features and overall building form would have warranted recognition as a historic resource. The resource was also noted as being in "excellent" condition at the time of survey in December 1983, which would have satisfied the "Integrity" criteria. However, most of those architectural features and design elements have either been removed or significantly altered, and no longer exist. The removal and the loss of the features and elements has also resulted in a loss of historical integrity.

The applicant is also arguing that, given the alterations and current condition of the historic resource, the resource is now not contributing to the character or continuity of the neighborhood.

3. The Building Official declares that the resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

The Building Official has not declared the resource a clear and immediate hazard, so this criteria is not applicable.

### **Owner Consent Process**

As discussed above, the applicant is also requesting that the historic resource be removed from the Historic Resources Inventory based on the "owner consent" process as described in Section 17.65.030(E) of the MMC. This owner consent process was added to the MMC to be consistent with

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recent case law and recent amendments to the Oregon Administrative Rules (OARs) related to Goal 5 historic resources. Section 17.65.030(E) of the MMC states the following:

- E. The Historic Landmarks Committee must remove a historic resource from the inventory if the designation was imposed on the property and the owner at the time of designation:
1. Has retained ownership since the time of designation; and
  2. Can demonstrate that the owner objected to the designation on the public record; or
  3. Was not provided an opportunity to object to the designation; and
  4. Requests that the Historic Landmarks Committee remove the resource from the inventory.

The applicant, who has provided notarized record that the current property owners have given authorization for the applicant to represent their requests, is claiming that the current owners are objecting to the historical designation of the building on the subject property. The written request states that the current owners have retained ownership since the time of designation, and that they believe that they were not allowed the opportunity to object to the designation of their property on the Historic Resources Inventory. The applicant and owners have now officially, as part of their written request, requested that the property be removed from the Historic Resources Inventory.

Staff has completed research into the process that was undertaken in the 1980s during the initial inventories and adoption of historic preservation regulations that followed. From Planning Department records that were able to be obtained, there is evidence that the following actions were completed:

- November 23, 1982 – City Council adopted first Historic Preservation Ordinance
  - Historic Preservation regulations and procedures adopted by Ordinance 4228
- 1983 - 1984 – Further survey work was completed.
  - State Historic Preservation Office (SHPO) provided funding assistance in the completion of survey work. The City's written request to the SHPO for funding assistance, written by then Planning Director Richard Highsmith and dated April 1, 1983, described the proposed process to be followed during the completion of the survey work. The work was proposed to be split into three phases, and the last item in Phase III was to "Prepare amendments to the McMinnville Historic Preservation Ordinance" and also to "Notify owners of properties included on list of sites and structures which are protected under the ordinance."
  - Additional funding was requested in another written request, dated December 15, 1983, to complete further notification of properties that were surveyed but that were not going to be protected by the City's historic preservation ordinance. The properties that were surveyed and designated as Contributory or Environmental were not subject to design requirements at the time, and those may be the properties referred to for additional notification. Specifically, the letter states:
 

"The original contract failed to include funding for notification of property owners whose structures were surveyed, but will not be protected by the City historic preservation ordinance. Many of these structures contribute to the character of the city and an effort should be made to inform owners that preservation options are available. Additional funding is needed to send letters to these owners. It is estimated that approximately 225 property owners will need to be contacted."
- 1987 – Updates made to Historic Preservation Ordinance

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- A revised version of the Historic Preservation Ordinance was adopted by Ordinance 4401.
- Ordinance 4401 included reference to the “second phase” of survey work completed in 1983/1984. Ordinance 4401 also repealed Ordinance 4228.
- Ordinance 4401 adopted the Historic Resources Inventory, which is specifically described as being “compiled in 1983/1984”.

While there is reference in the materials during the time of the 1983/1984 survey completion about the notification of property owners at the time of the survey, records were not able to be found for specific written letters provided to each individual property owner. However, there is a stated intent that the notifications would occur, thereby providing some level of notification and opportunity for objection. Because there is not clear evidence that the property owner was not made aware of the survey and eventual designation of their property on the Historic Resources Inventory, staff does not believe that a clear burden of proof is available to determine whether the owner consent process in Section 17.65.030(E) of the MMC can be followed to remove the resource from the Historic Resources Inventory.

Given that the applicant has also requested deletion of the historic resource under the process described in Section 17.65.030(F), staff suggests that the Historic Landmarks Committee complete the review of the requests under that process and the applicable review criteria.

**Fiscal Impact:**

None.

**Committee Options:**

- 1) **APPROVE** the application, providing findings of fact for the required demolition review criteria.
- 2) **APPROVE** the application **WITH CONDITIONS**, providing findings of fact for the required demolition review criteria.
- 3) **DENY** the application, providing findings of fact for the denial in the motion to deny.

**Recommendation/Suggested Motion:**

Given the alterations and removal of historic features and architectural design elements, and the findings described above in the applicable review criteria, staff is recommending that the request to delete the historic resource from the Historic Resources Inventory be approved under the process and review criteria described in Section 17.65.030(F).

Staff would suggest that, if the Committee moves forward with approval of the request based on findings for Section 17.65.030(F), that the Committee also make findings for the owner consent process in Section 17.65.030(E) that a burden of proof and evidence was not available to determine whether the criteria in Section 17.65.030(F) were being satisfied. A draft decision document approving the deletion of the resource from the Historic Resources Inventory based on findings for the criteria in Section 17.65.030(F) is attached to this staff report. That decision document also describes the lack of evidence and burden of proof for the owner consent criteria in Section 17.65.030(E).

If the Committee chooses to make findings that would deny the deletion request under Section 17.65.030(F), staff would request that the application be continued to allow for additional research and legal counsel to occur related to the applicant’s removal requests under Section 17.65.030(E) (the owner consent process and review criteria).

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**Suggested Motion:**

Staff suggests that the Historic Landmarks Committee make the following motion to approve the Historic Resources Inventory deletion request:

**THAT BASED ON THE FINDINGS OF FACT AND THE CONCLUSIONARY FINDINGS FOR APPROVAL AS DISCUSSED BY THE HISTORIC LANDMARKS COMMITTEE, AND THE MATERIALS SUBMITTED BY THE APPLICANT, THE HISTORIC LANDMARKS COMMITTEE APPROVE THE DELETION OF THE HISTORIC RESOURCE AT 1206 NE 10<sup>th</sup> AVENUE FROM THE HISTORIC RESOURCES INVENTORY.**

CD:sjs

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