

**PLANNING COMMISSION MINUTES OF NOVEMBER 10, 2008**

**2008-0741** – Appeal of a decision by the Director of Community Development denying a Tree Removal Permit for an Oak tree located in the rear yard of a single-family residence. The property is located at **1384 La Bella Ave.** (near Cascade Dr.) in an R-1 (Low Density Residential) Zoning District. (APN: 323-08-019) EH (*Continued from October 27, 2008*)

**Gerri Caruso**, Principal Planner, presented the staff report. She noted a correction to the report on page 7 and 8 regarding the installation of a root barrier. She said the correction is that the trench may have to be dug for the full distance of the house in order to install the root barrier. She said staff recommends that the Commission deny the appeal and uphold the denial of the tree removal permit (TRP). She said that City Arborist **Leonard Dunn** is present this evening to answer questions.

**Comm. McKenna** confirmed with Mr. Dunn that he had been able to read the documents submitted by the appellant. Comm. McKenna asked about comments in the documents about the City-proposed root evacuation not being able to be accomplished safely. Mr. Dunn said he does not understand that comment and thinks possibly the arborist that made the comment assumed the trench would have to be 4 feet wide when actually only about a 6 inch wide trench is needed. Comm. McKenna asked about the root barriers and whether they are best used with new tree installations, not for retrofits with mature trees, and asked if the root barrier installation would cause significant harm to structure roots and roots important for tree health. Mr. Dunn said there are ways to safely prune roots, commenting that root pruning has to often be done even closer to the main part of the tree when tree roots are damaging sidewalks. Mr. Dunn discussed root sizes, distance of roots from the house, and the rate of decrease in size of the roots as they grow away from the main tree. Comm. McKenna said a couple of documents provided by the applicant from different consulting firms indicate that the cracks in the foundation are caused by the tree, and staff says the foundation cracks are not caused by the tree. She asked how the Commission should look at these conflicting reports. Mr. Dunn explained that staff thinks there is no way to know if the foundation cracks are caused by the tree or from something else, i.e. settling.

**Comm. Travis** asked staff about the two trees that were approved for removal from the front yard and why they were removed. Mr. Dunn explained that one of the trees was in decline, and the other tree was very close to the house and the roots were impacting the concrete foundation. Comm. Travis asked staff what the fine is if a person removes a tree and does not go through TRP process. **Trudi**

**Ryan**, Planning Officer, said that the code provides a maximum amount that can be assessed if there is destruction of tree of up to \$50,000 and there are different fine amounts for different situations.

**Comm. Klein** disclosed that he met with the applicant. Comm. Klein referred to page 7 of the report and asked for clarification about the information related to the foundation and the inspections, expressing concern about the conflicting information. He confirmed with staff that the report indicates one inspector expressed that the foundation does not need to be fixed now, but the damage is going to continue. Comm. Klein asked staff about the pictures of roots coming into the house. Staff said that there are roots in the sewer lines and coming up through the fixtures. Ms. Ryan said that regardless of the decision made about the trees, the sewer lines will still need to be repaired or replaced.

**Vice Chair Chang** disclosed that he spoke with the appellant. Vice Chair Chang discussed with Mr. Dunn the excavation and the distance of the excavation from the house and the tree. Vice Chair Chang discussed with staff the excavation occurring closer to the house and whether that possibly the evidence of root damage to the foundation might be more conclusive. Vice Chair Chang asked staff if the applicant was advised where to do the excavation. Ms. Caruso said she believes the patio room is in the way of getting closer to the house to do the excavation and that the appellant was advised to do the excavation as close to the house as possible.

**Ms. Ryan** commented on the potential fines or penalties to damaging or removing protected trees without a permit. She said there is \$5,000 to \$25,000 fine associated with injury or damage to a protected tree, and a \$10,000 to \$50,000 penalty associated with destruction or removal of a protected tree.

**Chair Rowe** asked about the way tree inspections are done and whether someone climbs the tree. Mr. Dunn said he does not climb the trees and that sometimes staff would climb a tree, but he does not know if this tree was climbed. Chair Rowe discussed with staff the diminishing size of a root with Mr. Dunn estimating that a 12-inch diameter root would diminish down after about 10 feet to a root size that would not damage a foundation. Comm. Rowe said she has read that a root system is about the same distance from the trunk as the canopy of the tree. Mr. Dunn said that the root system on this California native oak tree probably extends 2 to 3 times the diameter of the canopy. He said that extended roots are not very large. Chair Rowe disclosed that she met with the applicant.

**Chair Rowe opened the public hearing.**

**Janet George**, appellant and homeowner said she appreciates the opportunity to present this case. Ms. George said, with all due respect to Mr. Dunn, that he came to the site, looked at the tree from a distance and decided the tree needed to remain. She said he also said to her that he has 19 years experience and that this oak tree is not going anywhere. She said she approached the City after 12 years of living on the property and after going through very significant damages and long sustained pain from the trees. She said Public Works has been out to the property many times to address the tree damage to the sewer system. She discussed the extensive damage that the roots have caused to the sewer, the plumbing, and the inside of the house. She said she has a tree specialist with her this evening who is a scientist to talk about the tree, the excavation, the roots and the critical root zone. She said she called 60 people from a list the City provided to get assistance and only ended up with five willing to help because they have relationships with the City and do not want to interfere. She said she was required to provide evidence to the City to allow the tree removal. She said the evidence cost her \$15,000 and the City's decision did not change. She said the City said she had not excavated enough, and that she should root cut and put root barriers, even though the root barriers she put in 10 years ago did not work. She said root cutting in a critical root zone is hazardous and no one has been able to guarantee to her that the tree would not fall over. She said this is a very large tree that is very close to house. Ms. George said she inherited the improper planting and she is stuck between the house and the tree. Ms. George provided a PowerPoint presentation showing her justification for meeting the findings. She said she believes she has satisfied 3.5 of the 4 factors. She discussed that the tree is not in the best of health, she said the tree has caused damage to her property, and she has no access to her property right now and is currently living in a rental because of the conditions in the house. She showed pictures of the damage the roots have caused, the proximity of the tree to the house, discussed the many plumbing problems she has, the financial burden the tree has been, that the house is on a slab foundation and discussed the damage. She said she likes trees and it has taken her 12 years to come to the point to apply to remove the trees. She said this tree needs to go as she needs to be able to live in her home. She said there are many trees in neighborhood. She said she would be glad to plant replacement trees. She said she thinks the City's decision has set forth a difficult burden for her and is not mindful of the excessive cost to her. She said that the tree ordinance should not impede her ability to live on the property.

**Earl Gruber**, a Sunnyvale resident and neighbor, said that over the years he has witnessed the problems Ms. George has experienced with the trees, and that it amazes him the number of plumbing companies that have had to come out and try to correct the plumbing situation. He said Ms. George is the owner of the house and cannot even live in it.

**Sean Treichler**, a Sunnyvale resident and neighbor, said that Ms. George has only been able to come to the home on the weekends to work on the property as she is unable to live in the house due to the plumbing problems. He said he thinks that she has the dedication to maintain the property and spoke in support of allowing the tree removal.

**Roy C. Leggitt, III**, a consulting arborist with Tree Management Experts, said he appreciates that the Commission has read his report. He said the concept of further investigation to prove in a definitive way that roots are causing damage is beyond the standard that is normally used. He discussed the root system of the tree and long-term consequences of trimming the roots especially the larger roots. He said the house is 11 feet 2 inches from tree and discussed the diameter of tree and the canopy. He discussed the rule of thumb for measuring the critical root zone stating that the critical root zone for this tree would be about a 9 foot radius. He said his conclusions and recommendations are in Attachment G on page 3 of his report.

**Comm. Travis** said that Mr. Leggitt seems to be addressing some of the concerns that have been brought up and said that he would like to further hear his perspective on the concerns. Mr. Leggitt said one contrasting perspective between himself and Mr. Dunn is the impacts from sidewalk repair are much more superficial than for foundation excavation. Mr. Leggitt said that the process of putting in a root barrier for a tree by a sidewalk that may have had previous root pruning versus the impact of putting in a root barrier for a tree that has never had barriers has to be measured differently.

**Comm. Hungerford** disclosed that he spoke with the appellant on the phone. Comm. Hungerford asked Mr. Leggitt about one of his conclusions in Attachment G page 3 regarding hazardous potential. Mr. Leggitt said the excavation at 4 feet to expose roots would be hazardous to the operator unless the excavation was shored. Mr. Leggitt further discussed the process of root cutting, trench width, and the shear zone of tree, and long-term affects of root cuts. Comm. Hungerford confirmed with Mr. Leggitt that the two basic hazard concerns are for an individual involved in creating and being in the trench, and the long-term hazard that the tree may become destabilized.

**Comm. McKenna** disclosed that she met with applicant on the site. She asked Mr. Leggitt about roots in outside drains that snaking does not seem to solve and the only solution seems to be changing the whole piping system. Comm. McKenna asked if Mr. Leggitt felt that the appellant would need to change the whole piping system even if the tree were removed. Mr. Leggitt said that the presence of roots in pipes generally indicates a leaking pipe and the idea of

using a snake to cut roots will only temporarily solve the problem temporarily and the roots would grow back. He said if the tree remains, the only way to stop root intrusion is to repair the leaking pipe. He said if the tree is cut down and there are no more leaves the root system will die. Comm. McKenna asked, for this situation, if there are only two ways to get the roots out of the system, either remove the tree or replace pipes. Mr. Leggitt said he cannot speak to how the plumbing repairs would be accomplished other than the pipes need to stop leaking in order to keep the roots from growing into the system.

**Chair Rowe** asked Mr. Leggitt if he was the one who inspected the tree and found problems in the limbs. Mr. Leggitt said that he believes that Kevin Kielty with Kielty Arborist Services evaluated the upper structure of the tree. Mr. Leggitt said he looked more at the root impacts. Comm. Rowe asked Mr. Leggitt if there was a tree root that was 12 inches in diameter how long would it take for the tree to decrease to finger size root sizes. Mr. Leggitt said there are many variables that affect tree root size and said that the tree is 11 feet 2 inches to the facade of building which is very close to the structure for a tree this size. He said that he does not recommend cutting roots as large as 12 inches.

**Michael Trapp**, a Sunnyvale resident and neighbor, said he agrees with the staff recommendation to deny the TRP appeal. He said that he loves having the tree in the neighborhood. He said that Ms. George stated in her letter that she is unable to have anyone else on her property, commenting that her neighbor Mr. Gruber is there nearly everyday checking for mail, taking out trash, and even has a key as he is her local contact person. Mr. Trapp says that Ms. George says she cannot have solar on her roof. Mr. Trapp said without the two camphor trees in the front yard that she could put solar on her home. Mr. Trapp referred to Attachment R and said there are no dates on these letters and some do not have signatures or phone numbers. He referred to page 4 of the Attachment which he said he will deny that he ever signed a letter, or saw a letter. He said he has been in contact with Mr. Dunn and denies that he wants the tree taken out. He said he has been in contact with a lawyer regarding this. He said the homes in this area have the same floor plans. He said he had a sewer problem with his house and had a plumber come out and reroute the lines. He said when he had the lines fixed they had to cut the slab to replace a 4 foot section of pipe and it cost him \$1,800.

**Holly Trapp**, a Sunnyvale resident and neighbor, said the tree canopy is just hitting the roof line, and it is generally known that the tree roots extend to the length of the canopy. She said she doubts that the tree roots would have destroyed the plumbing. She said she would have to assume that the roots would not come close to the line. She said the tree has been on the site for 40 to 60 years and the appellant bought the house in 1996 knowing full well of the tree

size. She said since that time there have been three remodeling permits applied for that have expired and two planning permits that have been approved. She said none of these required the oak tree removal.

**Denise DeLange**, a Sunnyvale resident, said she has no relationship to the appellant and feels sorry for Ms. George regarding the many sewer problems she has had. Ms. DeLange said that she herself has had sewer problems and does not see this as a reason to remove the tree. She said that she happy that she lives in a City that values trees and has excellent staff. She said she does not think it is a good idea to second guess the staff decision on this.

**Tap Merrick**, a Sunnyvale resident, said that he does not know the parties involved. He commented about the history of trees in this area and said that sometimes people do dumb things, possibly a previous owners, and current owners should not be penalized for the choices of previous owners. He said the City has very structured rules for trees around the City, and commented that there are many street trees that are missing. He said even the City is not keeping up with the street tree plans. He said there are different ways that the City can add to our forest and still accommodate residents' various issues. He said Ms. George indicated that she would be willing to provide replacement trees. She said some people plant trees and do not realize what they have planted. He said there are reasons to cut down protected trees.

**Arthur Schwartz**, a Sunnyvale resident, said he is not going to argue the qualifications of the investigations. He commented that trees do not have an infinite life, and we do not know how long a tree will stand. He said there is evidence that this tree is not healthy. He said that he feels the City is overlooking the economics of this and he does not think it is fair to require the homeowner to spend all this money trying to prove conclusively something that cannot be proven. He said he thinks it is time that we give more emphasis to the homeowner instead of trying to save these trees that have problems. He said trees can be replaced in other places and that Central Expressway would be an excellent place to plant trees that would help the whole City. He suggested that the City take a broader look at the tree ordinance and see if the ordinance is accomplishing anything rather than causing grief for the homeowner, which should be the first thing we protect. He said he does not think we do enough to support homeowners.

**Ms. George** commented about Mr. Trapp's statements regarding the signed document in Attachment R which she says he did sign. She said since she left the property there has been a history of problems with this neighbor, listing the problems, and she said she thinks that is why he is saying he did not sign the letter. Chair Rowe asked Ms. George to only comment about items relevant to

the TRP appeal. Ms. George said in addition to the plumbing problems that there are extensive foundation problems with the house and she asked the Commission to consider not only the plumbing, but also the foundation and that she has to repair these and live in the house.

**Chair Rowe closed the public hearing.**

**Comm. McKenna** asked Mr. Dunn if he has any comments relevant to Mr. Leggitt's testimony. Mr. Dunn said he agrees with Mr. Leggitt, that he is a revered arborist in this area, and the points he made were probably pertinent. Mr. Dunn agreed that root pruning the tree could affect the tree over time. Mr. Dunn discussed root pruning further and commented that the tree could have another 50 to 75 years to live, but would eventually be in decline.

**Comm. Sulser** said he was conflicted on this appeal. **Comm. Sulser moved Alternative 2, to grant the appeal. Comm. Klein seconded the motion.** Comm. Klein considered offering a Friendly Amendment asking staff what size of a replacement tree is normally required for single-family homes. Staff said that normally only a 15-gallon size would be required and occasionally a 24-inch box size might be required. **Comm. Klein and Comm. Sulser agreed to a Friendly Amendment that Condition 1 be modified that the minimum size of the replacement tree would be a 24-inch box size.**

**Comm. Sulser** said in his time on the Commission he has heard a lot public testimony regarding TRP appeals. He said he has only approved a couple of TRP appeals. He said he thinks this tree does deprive the owner of reasonable use of her property and said that he can make the findings to support the removal of the tree.

**Comm. Klein** said he was able to make the findings. He said the use of the property, the health of tree, and the foundation damage are all problems. He said there is conflicting information, that he is not an expert, but has come to certain conclusions. He said he has also been on the Planning Commission for multiple years, and thinks he has only voted twice to approve a TRP appeal. He said an appeal takes a lot of information and the burden of proof is on the resident and the homeowner. He said trees are a resource for the City of Sunnyvale. He said ultimately the homeowner has given information to make this decision and said he would be supporting the motion.

**Comm. Travis** disclosed that he met with applicant at the site. He said he would be supporting the motion. He said this seems like an extreme case, due to the immense size of the tree and the proximity of the tree to the house. He said he thinks the tree is depriving the homeowner from living at the house.

**Comm. McKenna** said she has spent a lot of money to save trees in her own yard and that she is predisposed to not want to remove a tree. She said after having seen this tree first hand, that a whole number of issues came to the forefront relative to this appellant's situation. She said that she does not see herself voting for many tree removals in the future, that she will be supporting the motion, and thanked her fellow Commissioners for requesting the 24-inch box size replacement tree.

**Vice Chair Chang** said he would be supporting the motion. He said he thinks that the appellant has done her job to provide information to make this decision. He said the conflict on how to safely do the excavation clearly indicates that there is a big divide between points of view. He commended the experts for their valuable opinions.

**Comm. Hungerford** commented that the fact that each Commissioner feels the need to explain their vote indicates how difficult it is to decide to cut down a tree. He said it is rare for the Commission to grant a TRP appeal and the best evidence of it, is the agonizing the Commission has been doing over this. He said he can make the findings and will support the motion. He agreed that it is helpful having the appellant's arborist here to answer questions.

**Chair Rowe** said that everyone was concentrating on the root system, and she remembered other things discussed by arborist Kevin Kielty regarding the canopy, limbs, splitting limbs, and disease. She discussed the findings and said that she feels that appellant is not able to enjoy the use of her property.

**ACTION: Comm. Sulser made a motion on 2008-0741 to grant the appeal and approve the Tree Removal Permit with modified conditions; that condition 1 be modified that the required replacement tree be a minimum of a 24-inch box size instead of a 15-gallon size. Comm. Klein seconded. Motion carried unanimously, 7-0.**

**APPEAL OPTIONS: This action is final.**