

PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING AUGUST 10, 2006

Prepared by: Mike Isom, Senior Planner

<u>ITEM V-A:</u> TREE PERMIT VIOLATION – 1757 PARK OAK DRIVE -- (WHISPERING CANYON, LOT 27) – FILE # ATP 04-51

REQUEST

Staff requests that the Planning Commission review and take the appropriate enforcement action on a violation of the Tree Permit conditions of approval for Whispering Canyon, Lot 27.

Owner - Maria Andrichuk, Skyva Construction

SUMMARY RECOMMENDATION

Staff recommends that the Planning Commission take the following action:

- A. Adopt the finding that a violation of the Tree Ordinance has occurred;
- B. Require restitution/remediation as identified in the staff report;
- C. Require restitution for the recovery of staff time in the amount of \$386.30.

BACKGROUND

The project site is located at 1757 Park Oak Drive, which is within the Whispering Canyon subdivision in the Stoneridge Specific Plan. On February 10, 2005, the Planning Commission authorized the removal of 15 native oak trees from the subject property to facilitate construction of a single-family residence. Construction of the residence is underway and is approximately 50% complete.

In June 2006, the property owner's project manager informed staff that the project had incurred a violation of the Tree Permit conditions. According to a letter submitted by the property owner (Attachment 2), the property owner's son-in-law removed Tree #2575 (a 14" Blue Oak) following a heavy spring rainstorm. According to the letter, the tree was leaning toward the house and the owners were concerned that the tree would fall and potentially damage the structure or cause injury to workers.

VIOLATION

The Tree Permit approved for Lot 27 authorized encroachment into the Protected Zone Radius (PZR) of Tree #2575, but did not authorize removal of the tree. Condition #2 of the Tree Permit (see Attachment 3) specifies the trees approved for removal as follows:

Condition #2 – "Tree(s) #2193, 2194, 2195, 2196, 2197, 2198, 2229, 2230, 2501, 2502, 2503, 2504, 2505, 2511 & 2544 are approved for removal with this tree permit. All other native oak trees shall remain in place. Trees to be removed shall be clearly marked in the field and inspected by Planning Staff prior to removal. Removal of the trees shall be performed by or under the supervision of a certified arborist."

Tree # 2575 was removed in violation of Condition #2. Furthermore, the tree was not removed under the supervision of a certified arborist. Had staff been notified prior to the removal, staff may have been able to deem the tree a hazard and allow its removal under an exemption provided by the Tree Preservation Ordinance.

At staff's request, an arborist has evaluated the remaining trees on the property for potential damage that may have occurred during the removal of Tree #2527. According to the arborist's letter (Attachment 4), all remaining trees are in the same condition (fair and poor) as the time the original tree permit was approved. Subsequent inspection by Planning Department staff has not revealed any obvious damage to the remaining trees.

PENALTIES/RESTITUTION

Where violations of the Tree Ordinance have occurred, Section 19.66.080 (Attachment 5) of the Roseville Municipal Code provides for the enforcement of penalties. The Planning Commission's options for penalties include: restitution, criminal prosecution, suspension and revocation of tree permit(s), and stop work orders. Section 19.66.080.B.2 states that the Planning Commission may require restitution in cases where a native oak tree or multiple native oak trees are damaged, killed, removed, or damaged to the point where their long term survival cannot be assured. Where trees are killed or removed, Section 19.66.080.B.2.c states that the restitution *shall* be calculated at triple the mitigation rate.

Staff Recommendation

Consistent with restitution required by the Tree Preservation Ordinance, staff recommends restitution in the amount of \$4,956 (14" diameter X \$118 per inch X 3). The project is already required to provide 32 inches of mitigation through on-site plantings for the previously approved tree permit. Additional on-site plantings are not feasible. Therefore, payment of an in-lieu mitigation fee in the amount of \$4,956 is recommended within 14 days of the Planning Commission's action.

Section 19.66.080.B3 of the Municipal Code provides for stop work orders when there is a violation of the Tree Ordinance. Upon learning of the violation, staff placed an inspection hold on the project. Staff has informed the applicant that an occupancy permit will not be issued until the required restitution and mitigation is complete.

Cost Recovery

In addition to the restitution noted above, staff recommends that the Planning Commission require restitution to include cost recovery of staff time in processing the violation as follows:

	Field Visit	Report Preparation	Review Reports /	Hourly	Total	Total
		/ Documentation	Documentation	Rate	Hours	
Senior Planner	1 hour	3 hours	0.5	\$64.37	3.5	\$289.67
Planning Director			0.5 hour	\$93.38	0.5	\$46.69
Clerical Staff		2 hours		\$24.97	2	\$49.94

\$386.30

CONCLUSION

The owner has complied with all other applicable tree permit conditions, including pre-construction inspections, and has been in frequent communication with Planning Department staff throughout construction of the residence. It was also the owner who alerted staff to the violation. The owner and project manager have accepted full responsibility, have been cooperative throughout staff's investigation, and are in agreement with the recommended penalties.

RECOMMENDATION

The Planning Department recommends that the Planning Commission take the following actions:

- A. Find that a violation of the Tree Preservation Ordinance occurred which resulted in the death of a protected native oak tree, and per the provisions of the Tree Preservation Ordinance, the public should be compensated.
- B. Require the property owner to provide mediation/restitution as identified in the staff report for the removed tree.
- C. Require restitution to include cost recovery of staff time in processing the violation in the amount of \$386.30

ATTACHMENTS

- 1. Plot Plan
- 2. Letter from Property Owner dated June 8, 2006
- 3. Tree Permit 04-51 Conditions of Approval
- 4. Arborist Report
- 5. Roseville Municipal Code Section 19.66.080 (Violations and Enforcement)

Note to Applicant and/or Developer: Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.