

ITEM V-C: TREE PERMIT VIOLATION – 1965 PARK OAK DRIVE – WHISPERING CANYON LOT 51 – FILE # TP 03-06

REQUEST

Staff requests that the Planning Commission review and take the appropriate enforcement action on a violation of the Master Tree Permit conditions of approval for Whispering Canyon Lot 51.

Property Owner – Lance & Seleste Buriani

SUMMARY RECOMMENDATION

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

- A. Adopt the finding that a violation of the Tree Ordinance has occurred;
- B. Require restitution/remediation as identified in the staff report; and
- C. Require restitution for the recovery of staff time in the amount of \$569.62

BACKGROUND

The subject property is located at 1965 Park Oak Drive (Lot 51) within the Whispering Canyon subdivision in the Stoneridge Specific Plan. On May 8, 2003, the Planning Commission approved a Master Tree Permit for the subdivision with the understanding that several of the trees would need to be removed in order for the individual property owners to develop their parcels. The building envelope on each parcel was therefore identified and trees within the envelope would be eligible for removal through the Administrative Tree Permit review process. Protected oak trees located outside of the building envelopes could not be removed without prior review by the Planning Commission through a Tree Permit application. Both the Administrative Tree Permit and Tree Permit processes were established to allow an opportunity for the public and staff to evaluate the circumstances of the tree removal and ensure that the Master Tree Permit conditions of approval are adhered to and mitigation is provided.

The Master Tree Permit included Lot 51 and identified four Blue Oaks on the property and two that overhang onto the property, as shown on the building envelope and tree removal exhibit (Attachment 1). Three of the trees (Tree #1667, #1668 and #1669) were located within the building envelope and were eligible for removal through the Administrative Tree Permit review process. The fourth tree, Tree #1671, was to remain because it did not impede the development of the property.

The Planning & Redevelopment Department became aware of a potential tree violation on the property in September of 2006. Staff conducted a site visit on September 26, 2006 and confirmed that two of the four oak trees on the property were removed (Tree #1669 & #1671). Staff contacted the property owners via phone and Mr. Buriani communicated to staff that the property is for sale. The real estate agent, Donald Stitt, had hired a certified arborist, Ken Lord of Trees Pros Inc., to remove the two trees, under the assumption that the tree company would first obtain the necessary permits. Upon investigation it was discovered that tree permits were not issued for the removal of the two trees (Tree #1669 and #1671), and only one of the trees, Tree 1669, was eligible for removal under the Administrative Tree Permit process. Staff was not contacted by the property owners, the real estate agent or Tree Pros prior to the removal of the trees. The removal of the trees without a permit is a violation of the Tree Preservation Ordinance and

in direct conflict with the conditions of the Master Tree Permit. Staff notified the Buriani's of the violation in a certified letter dated October 2, 2006 (Attachment 2).

An arborist report dated May 8, 2003, was used for the Master Tree permit and listed Tree #1669 in fair condition and Tree #1671 in poor condition (Attachment 4). Mr. Stitt submitted a memo, dated October 26, 2006 that outlines the dates and events regarding the tree removals on the property (Attachment 7).

VIOLATION

The Whispering Canyon Master Tree Permit identified that Tree #1669 (a 18" Blue Oak) was eligible for removal through an Administrative Tree Permit, per condition #2 and #7. However, an Administrative Tree Permit was not applied for or approved nor was mitigation provided prior to the removal of Tree #1669. The removal of Tree #1669 is in direct conflict with Condition #2 and #7 as listed below.

Condition #2 of the Whispering Canyon Master Tree Permit states the following:

2. *The trees identified in Exhibit A (Master Tree Permit) are approved for removal with this tree permit. Individual property owners shall submit an Administrative Tree permit for review and approval by the Planning Department at time of plot plan submittal. At that time, the Planning Department shall provide public notice of the request for an Administrative 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. No trees shall be removed until specifically authorized by the Planning Department through an Administrative Tree Permit. Removal of the trees shall be preformed by or under the supervision of a certified arborist.*

Condition #7 of the Whispering Canyon Master Tree Permit states the following:

7. *The property owner of each affected lot shall be responsible for the replacement of the total number of inches proposed for removal prior to any tree removal. The total number of inches approved for removal with this permit is shown in Exhibit A (Master Tree Permit). Mitigation must be provided prior to approval of an Administrative Tree Permit for each lot.*

The second removed tree on the property, Tree #1671, would have required the approval of a Tree Permit application by the Planning Commission prior to the removal of the tree, per the Tree Preservation Ordinance. Tree #1671 was a multi-trunk Blue Oak with the largest trunk diameter measuring 19", and was removed without a Tree Permit.

Section 19.66.030 (A) of the Tree Preservation Ordinance states the following:

Permit Required. No person shall conduct any regulated activities within the protected zone of any protected tree; or harm, destroy, kill or remove any protected tree unless authorized by a tree permit or as provided in subsection C.

Subsection C allows the Planning Director to authorize the removal of a protected tree without a permit if the tree is damaged by natural causes, is interfering with public utilities, has been deemed dead by a certified arborist, creates a hazardous condition and/or is located on a property developed with a single family or two-family dwelling that has been granted occupancy. Although the property owners claim Tree #1671 was dead, a certified arborist report confirming the condition of the tree was not submitted to the Planning Department prior to the tree removal, and therefore is not exempt from the Tree Permit process. The removal of the tree is a violation of the Tree Preservation Ordinance.

Based on a site visit by staff, it does not appear that damage has been done to the remaining trees and no other tree violations have occurred.

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

A building permit application has not been submitted and it is unknown when, by whom, and how the site will be developed. Staff is therefore hesitant to recommend mitigation planting in lieu of or in addition to the restitution fees. Consistent with restitution required by the Tree Preservation Ordinance, staff recommends restitution in the amount of \$13,098 [(1669: 18” diameter X \$118 per inch X 3) + (1671: 19” diameter X \$118 per inch X 3)]. Payment of an in-lieu mitigation fee in the amount of \$13,098 is recommended within 14 days of the Planning Commission’s action.

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 / Documentation | Review Reports / Documentation | Hourly Rate | Total Hours | Total |
|-------------------|-------------|------------------------------------|--------------------------------|-------------|-------------|----------|
| Associate Planner | 1 hour | 5 hours | | \$50.51 | 6 | \$303.06 |
| Senior Planner | | 1 hour | 1 hour | \$68.07 | 2 | \$136.14 |
| Planning Director | | | 1 hour | \$102.2 | 1 | \$102.21 |
| Clerical Staff | | 1 hour | | \$28.21 | 1 | \$28.21 |
| | | | | | 10 | \$569.62 |

CONCLUSION

Based on staff’s investigation, it is clear that a violation of the Master Tree Permit and the Tree Preservation Ordinance occurred. While the property owner did not physically cut the trees down, it is ultimately their responsibility to ensure that the appropriate permits are secured prior to removal of native oak trees. The owner is now aware of the violation and of their responsibility, has been cooperative throughout staff’s investigation, and has been informed of the recommended penalties.

RECOMMENDATION

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

- A. Find that a violation of the Master Tree Permit and the Tree Preservation Ordinance occurred which resulted in the death of two protected native oak trees, 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 \$569.62

ATTACHMENTS

- 1. Building Envelope and Tree Removal Exhibit for Lot 51 from Master Tree Permit
- 2. Staff Violation Letter dated October 2, 2006
- 3. Master Tree Permit 03-06 Conditions of Approval
- 4. Master Tree Permit Arborist Report for Lot 51
- 5. Roseville Municipal Code Section 19.66.080 (Violations and Enforcement)
- 6. Photos of Lot 51 and Tree #1669 & #1671
- 7. Memo from Donald Stitt dated 10/26/06

Note to Applicant and/or Developer: Please contact the Planning & Redevelopment 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 & Redevelopment Director at, or prior to, the public hearing.