

PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING July 14, 2005

Prepared by: Michael Isom, Project Planner

ITEM V-B: TREE PERMIT VIOLATION – 1215 PLEASANT GROVE BOULEVARD (PLEASANT GROVE PROFESSIONAL CENTER) – FILE # TP 03-55

REQUEST

Planning Staff is forwarding this Tree Permit violation to the Planning Commission for the enforcement of violations of the conditions of approval for the previously approved tree permit for the Pleasant Grove Professional Center.

Applicant – Eric Curtis, A.P. Thomas Construction Owner – Tim Gagnier, Granite Bay Ventures

SUMMARY RECOMMENDATION

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

- Adopt the finding that a violation of the Tree Ordinance has occurred; and,
- Require restitution/remediation as identified in the staff report.

BACKGROUND

On February 26, 2004, the Planning Commission approved a tree permit (file #TP 03-55) authorizing the removal of eleven (11) native oak trees and encroachment into the Protected Zone Radius of several others in association with the Pleasant Grove Professional Center project. The project broke ground in the summer of 2004 and is currently under construction. The site work and several of the buildings within the project are nearing completion and are ready for final inspections.

As required by the conditions of approval, Planning staff met in the field before construction commenced with the contractor, arborist, and owner representatives to discuss the limitations of the tree permit and what types of activities would violate the conditions of approval of the tree permit. The Inspection / Compliance verification checklist for this project is included as Attachment 2 for the Commission's reference that indicates the date the tree fencing inspection and field meeting took place. The importance of keeping tree fencing erect and abiding by the conditions of approval was discussed with the contractor with the admonishment that any violation of the approved conditions would result in enforcement action.

Current Violation

On June 3, 2005, the Planning & Redevelopment Department received a complaint regarding potential violations of the project's tree permit. Pictures were forwarded to staff (Attachment 3) showing heavy equipment being operated within the Protected Zone Radius of a protected native oak tree near Building B (Tree #51 – see Site Plan, Attachment 12). Subsequent inspection by City staff also revealed several instances of downed protective tree fencing (Attachment 4), and materials being stored within the protected zone of trees along Pleasant Grove Boulevard. These are all violations of the project's approved tree permit.

On June 7, 2005, staff met with the contractor in the field to determine the extent of the unauthorized encroachment and sent a certified letter was sent to A.P. Thomas Construction notifying them of the violation (see Attachment 5) and establishing a hearing date of July 14th. On June 8, 2005, Code Enforcement issued an administrative citation at the request of Planning Department staff (Attachment 11). The citation was not contested and the \$200 fine was paid on June 22nd.

Previous Violations

This is not the first violation that staff has investigated involving this project. Previous violations are as follows:

- **September 17, 2004**, shortly after construction began, City inspection staff observed downed protective fencing and materials stored and vehicles parked within the protected zone of several native oaks. Planning Department staff sent an email (Attachment 7) to Eric Curtis with A.P. Thomas Construction along with photographs (Attachments 8a & b) warning of the violation. It was stated in that email that a future violation would result in a citation and possible stop work order.
- October 4, 2004, Planning Department staff received an anonymous complaint regarding downed tree
 fencing on the project site. A photograph of the downed fencing is included as Attachment 9. The City's
 Code Enforcement Division issued an administrative citation for this violation on October 22, 2004
 (Attachment 10). A follow up telephone message to Eric Curtis by Planning Department staff warned
 that any future violations would be forwarded to the Planning Commission for enforcement. This
 citation was also not contested and the fine was paid.

Because of the repeated violations, the Planning & Redevelopment Department is forwarding the current violation to the Planning Commission for their consideration, and determination of the appropriate restitution.

INVESTIGATION OF VIOLATIONS

As a result of its investigation, the Planning & Redevelopment Department has concluded that two conditions of approval were violated on June 3, 2005 as follows:

<u>Condition #16</u> - Storage or parking of materials, equipment and vehicles is not permitted within the protected zone of any oak tree. Vehicles and other heavy equipment shall not be operated within the Protected Zone of any oak tree. (Planning)

As evidenced in the attached photo (Attachments 3), heavy equipment was utilized within the protected zone of a tree slated for preservation. The operation of heavy equipment in the protected zone of native oaks is prohibited to prevent the compaction of native soil and roots. It should be noted that the tractor appears to be extremely close to the tree trunk in the photograph. In actuality, the tractor came within 10 to 15 feet of the trunk, which was concluded by staff after evaluating tire tracks. While this is still a clear violation, it is not as severe as the photograph would suggest.

According to the damage assessment prepared by the project arborist (Attachment 6), soil disturbance/displacement and flattened grasses were evident beneath the tree, along with a broken branch measuring 1.25 inches in diameter. The project arborist believes that no irreparable damage has occurred and recommended that the branch be properly pruned and treated and the area where the lift was operated

be jetted with water to relieve soil compaction. According to the contractor, this work was to be completed during the week of July 4th under the arborist's supervision. At the time this report was written, a certification letter from the arborist attesting that remediation work had occurred was not available. Staff will report verbally to the Commission regarding the current status of remediation work.

<u>Condition #18</u> - The temporary fencing shall remain in place throughout the entire construction period and shall not be removed without obtaining written authorization from the Planning Department. In no event shall the fencing be removed before the written authorization is received from the Planning Department. (Planning)

During investigation of the most recent complaint, staff observed downed tree fencing in the area the violation took place, as well as other areas. Photographs of the downed tree fencing are included as Attachments 4a & b. Written authorization was not provided by the Planning Department to move or take down the fences in question.

PENALTIES/RESTITUTION

Where violations of the Tree Ordinance have occurred, Section 19.66.080 (Attachment 12) 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.

Remediation may also be required in an amount determined by the Planning Commission, based on a remediation plan developed by an arborist to repair the damage and ensure the long-term survival of the tree(s). Lastly, the Planning Commission may require restitution calculated at triple the mitigation rate (currently \$118 / inch) for removed, killed, or damaged trees where the long-term survival cannot be assured.

In this case, the Planning Department did not issue a stop work order and allowed construction to continue (under increased scrutiny). As previously mentioned, the contractors were preparing to ask the City for final inspections on several of the buildings in mid June. Due to the pending tree permit violation, the Planning Department placed a hold on all buildings and will not allow final inspections to occur until the Planning Commission has reviewed the violation.

Since receiving notice of the violation, the contractor has assigned a worker (full-time) to monitor protective tree fencing and to monitor construction as it relates to the approved tree permit. Since that time, staff is not aware of any further problems.

Staff Recommendation

The current violation in itself is relatively minor in comparison to other violations reviewed by the Planning Commission. However, this is the third time such a violation has occurred on this project site and the contractors had been directed to comply with the conditions of the tree permit or future violations would result in Planning Commission enforcement and possible increased financial penalties.

Although a limb was broken, the arborist has indicated that Tree #51 did not incur irreparable damage and the impacts are relatively minor. Since damage did not occur that would put the long-term survival of the tree in question, the Tree Preservation Ordinance does not provide for the imposition of the triple mitigation penalty (in this case, \$16,284 for 46" Tree #51). However, Condition of Approval #6 (see Attachment 2) clearly states that each occurrence of a violation on any condition regarding tree preservation shall result in forfeiture of all or a portion of the cash deposit or bond. Due to the repeated history of violations, staff recommends that the \$10,000 bond posted for the project be forfeited. In-lieu of forfeiting the bond, the contractor may pay the cash equivalent to the City's Tree Mitigation Funds.

Given the history of repeated violations on the project site, staff recommends that the Planning Commission initiate the following restitution:

- Require restitution by forfeiture of the \$10,000 tree preservation bond or allow the payment of the cash equivalent.
- Require that A.P. Thomas Construction continue to allocate full time staff resources toward
 protective tree fencing monitoring and monitoring compliance of all other tree permit conditions of
 approval for the remainder of the project's construction.
- Require payment of cost recovery of staff time in processing the violation as follows:

Staff Member	Field Visits	Report Preparation/ Documentation	Review Reports / Documentation	Attendance at Public Hearing	Hourly Rate	Total Hours	Total
Project Planner	2.0 hours	10.0 hours	2.0 hours	1.0	\$50.96	15.0	\$ 764.40
Senior Planner		2.0 hour	2.0 hours	1.0	\$64.37	5.0	\$ 321.85
Planning Director			0.5 hour	1.0	\$93.38	1.5	\$ 140.07
Clerical Staff		1.5 hour		1.0	\$24.97	2.5	\$ 66.43
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^{*} Direct staff costs only (salaries & benefits) – does not reflect indirect cost billing.

RECOMMENDATION

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

- A. Adopt the following Finding:
 - Violations of the Tree Ordinance occurred which resulted in the damage to protected native oak trees and per the provisions of the Tree Ordinance, the public should be compensated; and
- B. Require that the property owner provide restitution for the damaged trees and tree permit violations by forfeiture of the \$10,000 tree preservation bond (or payment of cash equivalent) and payment of

\$1,292.75 for recovery of staff time in processing the violation prior to allowing any building finals on the property.

ATTACHMENTS

- 1. Vicinity Map
- 2. TP 03-55 Conditions of Approval / Inspection Verification Checklist
- 3. Photograph of Heavy Equipment in PZR (Current Violation) June 5, 2004
- 4. Photographs of Downed Tree Fencing (Current Violation) June 6, 2005
- 5. Notice of Violation June 7, 2005
- 6. Tree Damage Assessment (Sierra Nevada Arborists) June 8, 2005
- 7. Email to Eric Curtis (Violation Warning) September 17, 2004
- 8. Photographs of First Violations Sent with Warning September 17, 2004
- 9. Photographs of Second Violation October 21, 2004
- 10. First Administrative Citation October 26, 2004
- 11. Second Administrative Citation June 9, 2005
- 12. RMC 19.66.080 Violations and Enforcement
- 13. Approved Site Plan

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.