

Jan H. H.

OFFICE OF THE CITY CLERK
2006 APR 20 AM 11:08

OAKLAND CITY COUNCIL

RESOLUTION No. 79909 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION DENYING THE APPEAL FILED BY IRVING AND MURIEL SCHNAYER AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR05-123 FOR AN UNDEVELOPED LOT ON SNAKE ROAD

WHEREAS, on November 3, 2005, East Bay Property Holdings, LLC (“Applicant”) submitted an application for Tree Removal Permit (TRP) DR05-123 to remove three trees from an undeveloped lot on Snake Road in order to build a single-family home; and

WHEREAS, due notice of the application was given to all affected and interested parties; and

WHEREAS, on December 15, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR05-123 for the removal of two protected trees and one unprotected tree from said property; and

WHEREAS, the decision was justified on the basis that Section 12.36.050 (A) (1) of the Protected Trees Ordinance justifies approval of the tree removals based on the trees’ proximity to a proposed structure; and

WHEREAS, on January 17, 2006, Irving and Muriel Schnayer (“Appellants”), filed an appeal with the Office of the City Clerk against the PWA decision approving TP DR05-123; and

WHEREAS, the appeal came before the City Council on May 2, 2006, and the appellants, and interested neutral parties were given ample opportunity to participate in the public hearing and were given a fair opportunity to submit relevant evidence to the City Council; and

WHEREAS, the public hearing on the appeal and application was closed by the City Council on May 2, 2006, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR05-123 subject to certain conditions noted below was passed; now, therefore, be it

RESOLVED: That the decision of the Public Works Agency is hereby affirmed; and be it

FURTHER RESOLVED: That the appeal filed by Irving and Muriel Schnayer against the decision of the PWA approving the removal of trees in TRP DR05-123 is hereby denied; and be it

FURTHER RESOLVED: That in accordance with the criteria established in Sections 12.36.050 (A) (1) of the Oakland Municipal Code, the removal of two protected trees in TRP DR05-123 is hereby approved by the Office of Planning and Building; and be it

FURTHER RESOLVED: That in accordance with Section 12.36.060 (A) and (B) of the Oakland Municipal Code, the conditions of approval in the tree permit (attached as Attachment A and hereby incorporated by reference as if fully set forth herein) shall be provided during the construction period; and be it

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all the evidence presented on behalf of all parties and being fully informed of the application, finds, for all the reasons stated in this resolution that the appeal should be denied. Therefore, the decision of the Director, PWA, approving tree removals is affirmed, the appeal is denied, and the application for tree removals is approved subject to the conditions of approval (attached as Attachment A and hereby incorporated by reference as if fully set forth herein); and be it

FURTHER RESOLVED: That the record relating to this application and appeal includes, without limitation the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the applicant and his representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices in relation to the application and attendant hearings;
4. all oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
5. all matters of common knowledge and all official enactment's and acts of the City, such as (a) Oakland Municipal Code, (b) other applicable City policies and regulations; and (c) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the City Council hereby adopts the CEQA findings of the City's Environmental Review Officer and finds that the Project is exempt from CEQA under CEQA Guidelines Section 15311 and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution and a copy will be on file in the Office of the City Clerk; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA,
PASSED BY THE FOLLOWING VOTE:

MAY 16 2006

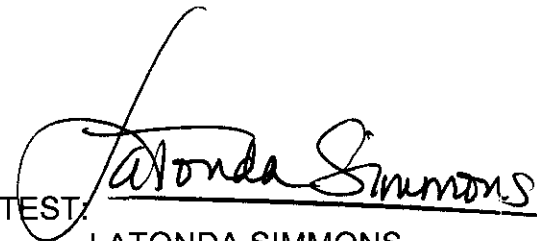
AYES- ~~BRUNNER~~, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- Brooks - 1

ATTEST.



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL**1. Limitations on Tree Removals**

Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.

2. Defense, Indemnification & Hold Harmless

Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

3. Debris. All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.

4. Tree Planting. Insufficient planting area exists for two native replacement trees to grow to maturity. An in lieu fee of \$300.00 per native tree removed, in accordance with the City of Oakland Master Fee Schedule, shall be paid to be applied toward tree planting in city parks, streets and medians.

Trees and plants shown on the landscape plan (L-1) dated February 7, 2005, shall be installed prior to the issuance of a certificate of occupancy. All trees planted in the public right-of-way shall require prior approval by the Public Works Agency's Tree Services Section in accordance with the City of Oakland's Street Tree Plan dated January 27, 1998.

5. Tree Watering. An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. Any replacement tree(s) not alive and healthy within one year of planting shall be replaced at the applicant's expense.

6. Site Posting. The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.

- 7. Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.