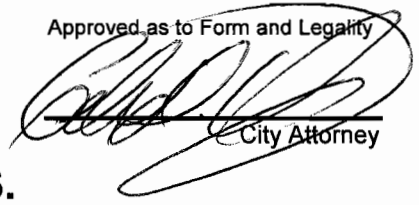


FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2012 NOV 15 AM 10:18 RESOLUTION NO. 84093 C.M.S.

Introduced by Councilmember _____

RESOLUTION DENYING THE APPEAL FILED BY ERNEST AND OKHOO HANES AND MARY MCCALLISTER, AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE REMOVAL OF FIFTEEN TREES, TO REMOVE THE TOPS OF TWENTY ONE (21) TREES AND TO PRESERVE 42 TREES ON CITY LOTS ADJACENT TO 6807 WILTON DRIVE, TO RESOLVE A VIEW CLAIM FROM PHYLLIS BISHOP

WHEREAS, trees growing on two City-owned, undeveloped lots zoned residential (RH-4/S-10) and designated Hillside Residential in the City’s general plan (“City Lots”) adjacent to 6807 Wilton Drive are substantially obstructing the panoramic views of San Francisco Bay and other landmarks from the home of Mrs. Phyllis Bishop (“View Claimant”); and

WHEREAS, on January 30, 2009, the View Claimant filed a View Claim pursuant to Oakland Municipal Code (OMC) section 15.51.100A; and

WHEREAS, on March 20, 2009 the Public Works Agency issued a View Claim Decision that that allowed the View Claimant to remove trees on the City lots; and

WHEREAS, on March 24, 2009 Okhoo Hanes challenged the View Claim Decision and requested the matter be held in abeyance pending further discussion and additional notification; and

WHEREAS, the *Bishop v. Hanes* legal action was initiated through the Alameda County Superior Court as a private dispute between two property owners regarding the City’s View Preservation Ordinance; and

WHEREAS, on October 27, 2011 the Court of Appeal of the State of California affirmed the lower court’s ruling in *Bishop v. Hanes* and affirmed the View Claimant’s right to restore their view; and

WHEREAS, in January 2012 the Hanes removed trees on their property and on March 29, 2012 the Public Works Agency issued a View Claim Decision and authorized the View Claimant to remove fifteen (15) trees, to remove the tops of twenty one (21) trees and to preserve 42 trees on the City Lots, subject to certain conditions of approval; and

WHEREAS, on April 16, 2012, the Hanes and Mary McCallister (“Appellants”) filed an appeal with the City Council against the March 29, 2012 View Claim Decision of the Public Works Agency; and

WHEREAS, the appeal was scheduled to come before the City Council at a duly noticed

public hearing on September 18, 2012 but was postponed due to protester disruption and was rescheduled and re-noticed for November 13, 2012

WHEREAS, the appeal came before the City Council at a duly noticed public hearing on November 13, 2012 and the appellants and interested 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, certain testimony and written materials submitted by the Appellants at/prior to the November 13th public hearing were not previously included in the appeal filed on April 16th and therefore are not properly before the City Council because the Appeal before the City Council is not de novo, but rather limited to the issues and/or evidence presented in the appeal itself, as stated in the various notices, decision letters, OMC section 15.52.100E and as determined by *Mashoon v. City of Oakland* (Appeal No. A077608; filed December 9, 1997; First Appellate District, Division Five), but, the City Council has nevertheless considered all issues and evidence submitted into the record prior to and at the public hearing on November 13th; and

WHEREAS, the public hearing on the appeal was closed by the City Council; Now, Therefore be it

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 View Claim, hereby finds that the View Claim Decision of the Public Works Agency approving the removal of fifteen (15) trees, to remove the tops of twenty one (21) trees and to preserve 42 trees on City Lots is affirmed and thus the appeal filed by Ernest and Okhoo Hanes, and Mary McCallister against the decision of the Public Works Agency is hereby denied, subject to the conditions of approval contained in Attachment E (including the Hold Harmless in condition #2), but **excluding** the additional conditions of approval contained in Attachments F to the September 18, 2012 City Council Agenda Report (reissued for the November 13, 2012 City Council meeting), hereby incorporated by reference as if fully set forth herein.

FURTHER RESOLVED, that the Oakland City Council finds there was no error or abuse of discretion by the Public Works Agency, that such decision is supported by substantial evidence in the record and the proposed view restoration work is consistent with the View Preservation Ordinance and arboricultural standards for all the reasons stated in this resolution, the City Council Agenda Report and the March 29, 2012 Public Works Agency View Claim Decision, all of which is hereby incorporated by reference as if fully set forth herein.

FURTHER RESOLVED, that the record relating to this view claim and appeal includes, without limitation the following:

1. 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;
2. all oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
3. 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; (c) general plan and zoning land use related maps and (d) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED, that the City Council hereby adopts the CEQA findings contained in the City Council Agenda Report 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 is an integral part of the City Council's decision.

NOV 13 2012

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

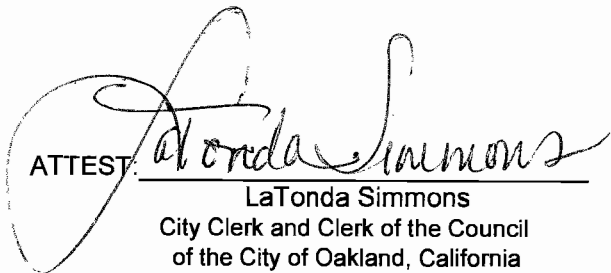
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

11/14/12