

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2003 OCT -9 PM 12:10

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Life Enrichment Agency
DATE: October 21,2003

RE: REPORT AND RECOMMENDATION ON THE APPEAL FILED BY FESTUS
OGBEIDE AGAINST THE DECISION OF THE OFFICE OF PARKS AND
RECREATION APPROVING A PERMIT TO REMOVE EIGHT TREES AT LOT 2848,
LONGWALK DRIVE.

SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit which involves the proposed removal of eight trees from an undeveloped lot on Longwalk Drive. In order to preserve the appellant's right to appeal the staff decision approving the permit application, staff requests the concurrence of the City Council in waiving the 18-day appeal deadline contained in the Protected Tree Ordinance (PTO).

Staff approved the Tree Removal Permit on the basis that the trees proposed for removal are growing within or in close proximity to the proposed driveway location and foundation footprint of a new single family home. Secondly, adequate provisions have been required for the protection of four other trees to be preserved on-site.

Requiring preservation of the trees would constitute an unconstitutional regulatory taking of property. The trees are growing in locations such that by requiring their preservation, the property owner would have to redesign the proposed home and driveway. The cost of additional design and construction expenses would exceed the value of the trees that would be preserved. Staff has prepared a resolution that will enable the City Council to implement a decision that denies Mr. Ogbeide's appeal, thereby allowing the issuance of the permit.

FISCAL IMPACT

There is no fiscal impact to the City's budget if the appeal is denied or upheld.

BACKGROUND

The Office of Parks and Recreation (OPR) approved a permit to remove seven Monterey Cypress and one Bay tree from this undeveloped lot on Longwalk Drive. The applicant and agent for the property owner, Bill Wong, applied to remove the trees in order to build a single-family home. The trees are growing within or in close proximity to the proposed driveway and footprint of the new home.

On August 5, 2003, Festus Ogbeide filed an appeal. The basis for appeal was stated as, "Very old trees which hold a lot of wildlife. Close proximity to house which provides shade." During the public comment period of twenty working days, the appellant was the only individual who expressed opposition to the permit application.

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KEY ISSUES AND IMPACTS

The PTO, Section 12.36.050(A)(1) of the Oakland Municipal Code, allows the removal of trees in order to insure the public health and safety as it relates to the proximity to proposed structures. However, preservation of trees is required if removal could be avoided by reasonable redesign of the site plan. OPR feels it is unreasonable to redesign the proposed new home for the following reasons:

- The new home has been designed according to the best location for this site. With a property frontage of less than eighty feet, any redesigned plan would still require most of these trees to be removed.

The issue is whether staff has correctly followed the PTO guidelines in approving Mr. Wong's tree removal application. Staff believes the PTO was properly applied and recommends that the City Council approve the resolution denying the appeal. This resolution allows the removal of eight trees and requires the preservation and protection of one California Bay Laurel and three Monterey Cypress trees on the property.

Section 12.36.050 of the PTO lists the criteria used to determine if a tree should be removed or preserved (see Attachment A). This criteria review is a two step process:

- First, the tree removals must be necessary in order to accomplish at least one of five possible objectives. In this case, two objectives apply; (a) the trees are within the proposed driveway location, foundation footprint or in close proximity to a proposed new home and (b) requiring their preservation would be considered an unconstitutional regulatory taking of property. The property owners would be restricted from a reasonable use of their property.
- Second, regardless of the first determination, the tree removal permit application may be denied if any one of four possible criteria applies. In this case, it is not reasonable to require the property owner to redesign the home to preserve any of the trees approved for removal.

The key issue is whether the value of the trees proposed for removal is greater than the cost of their preservation to the property owner. This cost, according to Section 12.36.050 of the PTO, shall include any additional design and construction expenses required.

SUSTAINABLE OPPORTUNITIES

The construction of this new home meets the Mayor and City Council's Priority Objective to improve the housing opportunities of the city's neighborhoods. Property tax revenues paid to the county will increase as a result of a new home being constructed on this vacant lot.

The PTO states that replacement plantings shall be required for the removal of native species in order to prevent excessive loss of shade, erosion control, groundwater replenishment, visual screening and wildlife habitat. If this permit were approved, a condition of approval would require the applicant to plant one 24-inch box native tree within the property boundaries.

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RECOMMENDATION AND RATIONALE

Staff recommends that the City Council waive the 18-day appeal deadline mandated by the PTO. This deadline has lapsed due to no fault of the appellant. Staff feels that it is important for the appellant to have the opportunity to present his case before the City Council.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR03-053 and allowing the issuance of a tree removal permit for seven *Cupressus macrocarpa* (Monterey Cypress) and one *Umbellularia californica* (California Bay Laurel) trees on private property at lot **2848** on Longwalk Drive.

ALTERNATIVE RECOMMENDATION

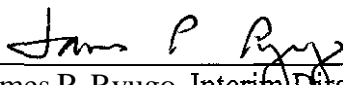
The City Council can reverse staffs decision and require the preservation of trees, require changes or impose additional conditions of approval that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO removal criteria in section 12.36.050. This type of action would be taken if the City Council found that staff made an error, abused their discretion when they approved the removal of the eight trees or where the evidence in record does not support such decision.

This alternative would require the property owner to redesign the new home. The redesigned home would still require the removal of some of the protected trees to allow construction. These additional redesign elements could be considered unreasonable if the owner is not permitted to construct the new home.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DR03-53 and issuing the tree removal permit for the removal of eight trees on private property at lot **2848** on Longwalk Drive. The Conditions of Approval for the tree removal permit include planting one native replacement tree and installing protective fencing around four trees that will be preserved.

Respectfully submitted,



James P. Ryugo, Interim Director
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



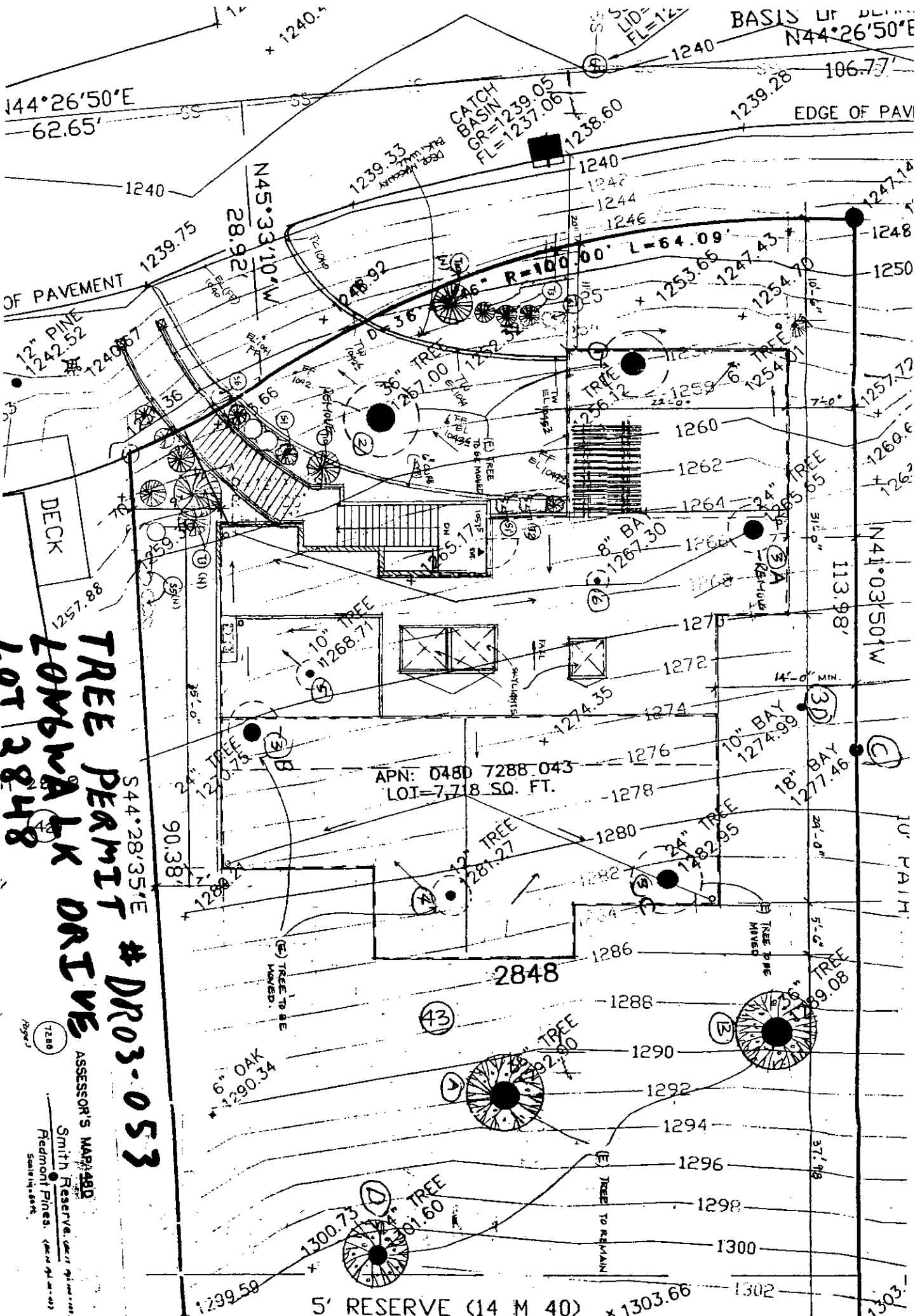
OFFICE OF THE CITY MANAGER

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ATTACHMENT A

Section 12.36.050 Criteria for tree removal permit review. Chapter 12.36 of the Oakland Municipal Code Protected Tree Ordinance

- A.** In order to grant a tree removal permit the City must determine that removal is necessary in order to accomplish any one of the following objectives:
1. To insure the public health and safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, **or** interference with utilities or sewers;
 2. To avoid an unconstitutional regulatory taking of property.
 3. To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code);
 4. To pursue accepted professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Parks and Recreation shall constitute compliance with this criterion;
 5. To implement the vegetation management prescriptions in the S-11 site development review zone.
- B.** A finding of any one of the following situations is grounds for permit denial, regardless of the findings in subsection A of this section:
1. Removal of a healthy tree of a protected species could be avoided by:
 - a. Reasonable redesign of the site plan, prior to construction;
 - b. Trimming, thinning, tree surgery **or** other reasonable treatment.
 2. Adequate provisions for drainage, erosion control, land stability or windscreen have not been made in situations where such problems are anticipated as a result of the removal.
 3. The tree to be removed is a member of a group of trees on which each tree is dependent upon the others for survival.
 4. The value of the tree is greater than the cost of its preservation to the property owner. The value of the tree shall be measured by the Tree Reviewer using the criteria established by the International Society of Arboriculture, and the cost of preservation shall include any additional design and construction expenses required thereby. This criterion shall apply only to development-related permit applications.



TREE PERMIT # DRO3-053
LOMBARD DR
LOT 2848

APN: 0480 7288 043
 LOT=7,718 SQ. FT.

7288
 ASSessor's MAP #480
 Smith Reserve, (see 15 pages)
 Redmont Pines, (see 14 pages)
 Scale 1/4" = 10'

5' RESERVE (14 M 40) * 1303.66

FILED
OFFICE OF THE CITY CLERK
OAKLAND
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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____
Margaret Foyles

RESOLUTION DENYING THE APPEAL FILED BY FESTUS OGBEIDE AGAINST THE DECISION OF THE DIRECTOR OF THE OFFICE OF PARKS AND RECREATION APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR03-53 (LOT 2848, LONGWALK DRIVE)

WHEREAS, on May 13, 2003, Bill Wong ("Applicant") submitted an application for Tree Removal Permit (TRP) DR03-53 to remove eight (8) protected trees from lot 2848 on Longwalk Drive; and

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

WHEREAS, on July 7, 2003, the Office of Parks and Recreation (OPR) approved the issuance of TRP DR03-53 for the removal of eight (8) trees 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 tree's proximity to a proposed structure; and

WHEREAS, on July 3, 2003, Festus Ogbeide ("Appellant") filed an appeal with the Office of the City Clerk against the OPR decision approving TRP DR03-053; and

WHEREAS, in this case all of the trees to be removed are located within or in close proximity to the proposed driveway location or foundation footprint of the structure; and

WHEREAS, the appeal came before the City Council on October 7, 2003, and the appellant, 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 October 7, 2003, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR03-68 subject to certain conditions noted below was passed; now, therefore, be it

RESOLVED: That the decision of the Office of Parks and Recreation is hereby affirmed; and be it

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FURTHER RESOLVED: That the appeal filed by Festus Ogbeide against the decision of the OPR approving the removal of trees in TRP DR03-53 is hereby denied; and be it

FURTHER RESOLVED: That in accordance with the criteria established in Sections 12.36.050(A) (1) and (2) of the Oakland Municipal Code, the removal of seven Cupressus macrocarpa (Monterey Cypress) and one Umbellularia californica (California Bay Laurel) tree in TRP DR03-053 is hereby approved by the Office of Planning and Building; and be it

FURTHER RESOLVED: That in accordance with 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, OPR, approving the trees removal 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

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FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution as to form and legality, 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:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

14.1

ORA/COUNCIL

OCT 21 2003