

MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number: 79540

City Council Meeting Date 10-18-05

Agenda Item No. 14.1 (05-0635)

Recorded Vote 7 Ayes, 1 Excused - Chang

Reason for Missing Legislation:

- Draft submitted in agenda packet, original never received
- Council amended legislation at the meeting

Responsible Contact Information:

Department PWA

Contact Person/Ext. _____

Notes (if any)

STANDARD CITY CLERK
RECORDS

05 OCT -5 PM 4:38

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. ~~25510~~ C.M.S.

Introduced by Councilmember _____

RESOLUTION DENYING THE APPEAL FILED BY JESSE KUPERS, KIM GOODWIN, DEBORAH COWDER, KEITH WILSON AND JESSICA SEATON AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR04-019 FOR 335 HANOVER AVENUE, IN ORDER TO BUILD A NINE UNIT CONDOMINIUM BUILDING

WHEREAS, on March 2, 2004, Sylvia Leung & Kenneth Leung (“Applicants and Property Owners”) and on January 21, 2005, Barbara Armstrong, (“Applicant and Agent for Property Owners”) submitted an application for Tree Removal Permit (TRP) DR04-019 to remove three trees from 335 Hanover Avenue in order to build a nine unit condominium building, and

WHEREAS, the project was redesigned, reducing the building’s size from 12 units to 9 units, and

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

WHEREAS, on May 19, 2004, the City Planning Commission held a public hearing on the construction of the condominium building prior to the project being redesigned and held its decision pending the final decision of the Tree Removal Permit, and

WHEREAS, on May 13, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR04-019 for the removal of three protected 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 trees’ proximity to a proposed structure; and

WHEREAS, on May 18 - 20, 2005, appeals were filed by Jesse Kupers, Kim Goodwin, Deborah Cowder, Keith Wilson and Jessica Seaton (“Appellants”), with the Office of the City Clerk against the PWA decision approving TP DR04-019; and

WHEREAS, the appeal came before the City Council on October 18, 2005, 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 October 18, 2005; now, therefore, be it

RESOLVED: That the City Council, prior to making its decision on the appeal, has independently reviewed and hereby adopts the CEQA findings of the City's Environmental Review Officer (incorporated herein by reference) and finds that the Project is exempt from CEQA under CEQA Guidelines Section 15332 and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; 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 and related materials, finds, for all the reasons stated in this resolution, the October 18, 2005, City Council Agenda Report and the May 13, 2005, PWA decision (hereby incorporated by reference), that the appeal should be denied, the decision of the Director, PWA, approving tree removals is affirmed, 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 can be located at 7101 Edgewater Drive, Building 4, and 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, and 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 custodian of the record for tree-related materials is the Tree Services Section located at 7101 Edgewater Drive, Municipal Service Center building

#4, Room 405; CEQA-related materials are with the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland 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, OCT 18 2005, 2005

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, BROOKS, [REDACTED], KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

-7

NOES -

ABSENT -

ABSTENTION -

Excused - Chang - 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.