

Commissioner Matteo referred to the staff report regarding changes in policy among property insurers and asked if staff had any additional information. Recreation Director Wilkinson stated “no”.

Chairperson Wall opened the Public Hearing.

Mr. Len Rifkind, attorney for the applicant, stated the Commission must make a decision tonight, on a tree-by-tree basis, based on the law. The Commission should look at the facts in order to make an appropriate decision based upon the findings. He stated a “finding” is something that bridges the analytic gap between all the information and their ultimate decision. It is not enough to say that a tree is hazardous- they must also say why it is hazardous. He was of the opinion that the City arborist’s opinion was evolving and the Commission must weigh which arborist’s opinion they value more. He referred to the document submitted by the applicant and stated it could be helpful to the Commission in their decision.

Mr. Ray Moritz, urban forester, consulting arborist, and fire ecologist, presented a Powerpoint presentation. He stated the applicant contacted him because her arborist was concerned about the health and condition of some of her trees. He looked at the trees from several different perspectives- the impact on the structure and infrastructure, the close relationship of the trees, a concern about the cut stumps that showed decay. He looked at the following: 1) species, 2) stand characteristic, 3) stand life history, 4) tree location, 5) tree health and vigor, 6) structural stability, 7) conflicts with improvements, 8) future stand development. The stand consists of daughter stems from five mother stems. He stated this is one of the densest Redwood stands he has seen and is 800 times denser than what is typical or recommended. He looked at pest and disease issues and found evidence of brown cubicle rot. He stated second growth trees are less stable than first growth trees. He stated competition and suppression is causing trees to drop out. Redwoods have very extensive and aggressive root systems and some of them are very close to the house. He discussed some technically correct methods of protecting the house and foundation from the trees and the location of a “root break”. He stated Redwoods should not be used for small gardens since they are big, massive trees, with wide spreading roots that compete with other plants. He referred to his report and discussed each tree individually.

Commissioner Hauser asked Mr. Moritz about the effect of removing one or two trees from a grove of trees. Mr. Moritz stated a tree could be removed from a grouping of daughter stems without causing danger. The removal of a number of daughter stems from a “fairy ring” of trees could have an impact on the stability of the other trees since they would be exposed to wind. Commissioner Hauser asked about the effect to the root system. Mr. Moritz stated there could be some dieback of the root system.

Commissioner Hauser asked Mr. Moritz if most homes throughout the City would comply with the criteria and guidelines that he discussed. Mr. Moritz stated he could not say “most” but there are a number of homes in the neighborhood that have small enough yards that they would not comply. He added that this stand has a surprising number and

density of trees. Mr. Hauser asked if there were other homes in Larkspur that have Redwood trees that are located 5 feet away from the foundation. Mr. Moritz stated “yes”.

Commissioner McNally asked about his use of the term “decline”. Mr. Moritz stated a tree is in a state of decline in terms of reduced growth rate, reduce health, and active attrition. Commissioner McNally asked if he meant that the trees were a hazard. Mr. Moritz stated that hazard increases with decline.

Commissioner Blauvelt stated Mr. Moritz uses the term “potential hazard” quite often in his report. Mr. Moritz stated “hazard” is a spectrum. There were two stems in declining condition a year and a half ago that are now a hazard because they are dead.

Chair Wall asked if he gave this presentation to the City Council during the appeal hearing. Mr. Moritz stated “yes”.

Commissioner Matteo asked, in a follow-up to Commissioner Hauser’s question about removing one daughter from a ring, if any of these rings would be more susceptible to negative effects. Mr. Moritz stated the fewer stems in a ring, the more impact there would be.

Commissioner Hauser referred to the trees that have two trunks and asked if one of the trunks could be removed or if it should be treated as one tree. Mr. Moritz stated one truck could be removed but it would result in a canopy imbalance. Double trunks are considered a defect that increases the hazard potential.

Chair Wall stated Mr. Moritz’s had recommended a 7-foot distance for the planting of Redwoods and stated he did not see how that would relate to a stand of mature trees. Mr. Moritz stated first growth Redwood grows from seed and daughter stems occur in these “fairy rings”. The recommendation is for planting new screen trees.

Commissioner Matteo had another question about the dynamics of the daughter rings and asked if would be more problematic to remove several trees from the same side of the ring. Mr. Moritz stated “yes”.

Mr. Ted Jacobs, representing Tree Masters Tree Service, stated it was important to look at the condition of the trees and to give an impartial judgment. He first visited this stand in September, 2004 and had never seen such a dense grove of trees. He also noticed some decline and cubicle rot. He was concerned about the proximity to the home and the damage being done to the home by the trees. He felt the trees needed a more thorough analysis and referred the applicant to Mr. Moritz. He would recommend removing the entire ring if the majority of trees in the ring are being removed. He stated all the findings could be made for all the trees. Mr. Jacobs stated he is not a certified arborist.

Mr. Richard Simon, insurance agent, stated he reviewed the trees and the house and made a determination that he could not insure that house or any house where there are trees of this magnitude. It was his opinion that most major insurers would not provide insurance

on this house. The trees are eroding the foundation and there is already damage to the house. In addition, the trees could fall on the house and cause a death. If someone were to provide insurance, it would be a “fair plan” which does not include liability.

Commissioner McNally asked if the property was presently insured. Mr. Simon stated “yes” and he felt it would continue as long as there was not a change in ownership or an inspection.

Commissioner Matteo asked if there was an acceptable distance according to the insurance companies. Mr. Simon stated he was not an arborist and every insurance company would determine what was and was not a safe risk. He decided that he could not insure this property.

Commissioner McNally asked if different insurance companies have different underwriting policies. Mr. Simon stated “yes”. Many companies are being more cautious about the type of risk they are willing to insure.

Commissioner Matteo asked what would need to be done to the property for him to insure it. Mr. Simon stated they would need to remove the trees away from the foundation.

Mr. Rifkind stated he appreciated the Commission’s attention to the insurance aspect because it relates to the finding regarding “economic impact”. There are letters that indicated that if the applicant were to lose her current policy she would have great difficulty in replacing it and it would be a significant impact to her. The Commission should not worry about setting a precedent since the ordinance requires them to make findings on a tree-by-tree basis. The ordinance used the word “poses” and does not require there to be a significant adverse hazard. He stated the Commission should make a decision based upon facts and not emotion. There are two competing arborist reports and he suggested they give Mr. Moritz opinion more weight for the following reasons: 1) His degree, 2) Mr. Morey has a conflict since he has been involved with this property for some time. He stated the City normally hires a peer review expert who is neutral and has no connection. In addition, they are getting conflicting reports from Mr. Morey. Mr. Rifkind stated Driver/Alliant, the company referred to in the staff report, is not an insurance carrier but rather a commercial broker for the City.

Chair Wall asked staff about the timing of the information received by Mr. Morey. Recreation Director Wilkinson stated the letters were received at 11:00 a.m. and 1:00 p.m. today. This was in response to a request by Chair Wall for more information.

Mr. Joseph Walburn, Monte Vista, distributed a letter to the Commission. He stated he, along with a group of concerned residents, visited the site and did not see any justification to remove any trees. They asked the applicant if they could bring in a consulting arborist to visit the site. The applicant eventually declined and stated she did not want any more visits to the property since the activity level was disrupting her tenants. He stated the Heritage Tree Ordinance exists to support the General Plan and the

mature trees in the community are part of the City's heritage. He asked the Commission to avoid any decision that would create a precedent.

Mr. Doug Kerr, Monte Vista Avenue, discussed the contents of Mr. Morey's recent letters. He stated an important aspect of the Ordinance is that it presupposes present tense. He questioned whether "economic enjoyment" was the ability to get an insurance policy. The house is currently insured and there is not conclusive evidence that the applicant could not obtain insurance.

Mr. James Holmes, Madrone Avenue, stated this is a legal proceeding and there is a specific ordinance that governs what the Commission should do. He was concerned about the denial of access to the property. The ordinance must be interpreted in a way that will not create adverse precedence. The term "hazard" refers to something more than the ordinary, reasonable, unforeseeable possibilities. He referred to Finding #1 and stated there was a potential concern with the topography and the effect of a possible mudflow if the trees were removed. The removal of a large number of trees would reduce group stability and wind protection. He stated the other findings could also be made. He stated the greater weight should be given to the City's arborist since he was not paid to reach a result. He stated there is no evidence that reasonable economic enjoyment of the property is being impaired.

Ms. Maureen Uribe, San Rafael resident, read a letter from the residents of 109 William Avenue in support of the application.

Mr. Eric Schmeer, Riviera Circle, stated he went into the backyard and felt the grove should be thinned out. He asked the Commission to consider the "un-usability" of the yard. He supports the application.

Mr. John Weist, San Francisco resident, stated there were hundreds of trees within 50 yards of this property. Some of the trees blew down in December, 1995. He stated the trees currently pose a danger to life or property and she is asking to remove only 21 of the 110 on the property. He discussed the issue regarding "economic enjoyment" and stated the applicant would have a difficult time selling the property since a property could not be bought if it could not be insured. He stated the applicant is not getting her full "economic enjoyment" and she is trying to protect her home, her life, and her property.

Ms. Eula Faily, Monte Vista Avenue, stated the neighbors have a right to obtain another arborist's opinion. The trees are for the enjoyment of the community.

Ms. Bernice Gilardi, Coleman Avenue, stated she was glad there was an ordinance that protected Heritage trees. She stated it was a good idea to get a third arborist's opinion. The ordinance states there must be proof that the trees are a hazard and she felt that nothing about the trees are detrimental to the property. She urged the Commission to enforce the ordinance. She stated she was the previous owner of the property and she took very good care of the grove.

Mr. Rick Adler, William Avenue, stated his backyard is almost an exact duplicate of the applicants and several of the trees are very close to his cottage. He had a branch fall on one of the skylights and he is installing a screen for protection. He feels the trees are very valuable and he is taking a different approach. He has never had any trouble insuring his property. He stated she could remodel around the trees or add a second story.

Ms. Barbara Salzman, Ardmore Avenue, stated the trees and native vegetation in Larkspur is what has attracted people to the area. She would like to preserve the natural environment. She discussed the “economic enjoyment” issue and stated the operative word was “reasonable” and nobody is guaranteed a certain level of economic benefit. There is a house on the property that is insured and was recently sold. There is no evidence of damage to the foundation. She felt that if the trees were cut down then there would be an application to expand the house into the back yard. The back yard is charming and very usable. She urged the Commission to uphold the ordinance and not allow the removal of any trees.

Mr. Kerr stated Mr. Morey makes a distinction between tree #23 and #23A and sees them as two trees.

The Commission took a 10-minute break at 9:35 p.m.

The meeting reconvened at 9:45 p.m.

Mr. Rifkind stated he would like to respond to some of the comments. He stated the applicant has suffered damage to her property at 21 Monte Vista from this grove of trees. She recently acquired the property and would like to deal with the problem. He pointed out a letter from her current agent representing the Asland Insurance Agency dated November 30th that states “if and when an inspection occurs on the applicants’ property the insurance would be cancelled”. He stated there was a report submitted by Donnelly Construction Company that discusses the lack of drainage that is in violation of the Uniform Building and Plumbing Code. He stated the Commission has information that suggests that there is a problem with these trees. Tree #23 is within a ½” of the house. She is asking to remove 21 trees leaving 89 trees on the property. The applicant does not want the risk that the trees pose to her property and life

Chairperson Wall closed the Public Hearing.

Commissioner Blauvelt discussed the insurance issue and is relying on the information in the staff report that indicates the City’s agent is not aware of any significant changes in policy among property insurers.

Commissioner Matteo stated he was concerned about the insurance issue and noted there were several letters in the packet indicating there could be a problem in obtaining insurance.

Commissioner Hauser stated they were talking about insurance in general and not this specific property. He stated this is an issue for every citizen in Larkspur who has trees. He has had damage to his property from falling branches and he is still insured. There is no specific evidence that there is something unique to this property other than the fact that the trees are close to the house. The insurance issue should not be a factor.

Commissioner McNally stated he was not concerned about the insurance issue and the applicant currently has insurance coverage.

Chair Wall agreed with Commissioner McNally and stated there were conflicting points of view. He stated he has 15 Heritage Redwood trees within 10 feet of his house. He has never had any problem getting insurance.

Chair Wall asked for comments about the new information presented by the contractor.

Commissioner Blauvelt stated the letter does not say the house must be brought up to current code standards and there was nothing relevant. In fact, the letter from the contractor makes no mention of any structural damage to the house.

Chair Wall suggested they discuss the trees in reverse order.

M/s, Blauvelt/Hauser, to deny the removal of tree #49 based on the inability to make the findings. There is no new evidence that this tree poses a hazard.

Ayes: All

M/s, Blauvelt/Hauser, to deny the removal of tree #48 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not pose a danger to life or property.

Ayes: All

M/s, McNally/Matteo, to deny the removal of tree #46 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not currently pose a danger to life or property.

Ayes: All

M/s, Blauvelt/Hauser, to deny the removal of tree #44 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not pose a danger to life or property.

Ayes: All

M/s, Blauvelt/Hauser, to deny the removal of tree #43 based on the inability to make the findings. The removal would affect the health and welfare of the community.

Ayes: All

M/s, Blauvelt/Matteo, to deny the removal of tree #42 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not pose a danger to life or property.

Ayes: All

M/s, Blauvelt/McNally, to deny the removal of tree #41 based on the inability to make the findings. The tree does not pose a danger to life or property.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo stated he was concerned about the proximity of the tree to the house (7 feet) and an argument could be made that selective removal of some of the trees would not adversely affect the general health, safety, and welfare of the community. He is concerned about the economic impact.

M/s, Blauvelt/Hauser, to deny the removal of tree #40 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not pose a danger to life or property.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo stated he was concerned about the distance issue even though Mr. Moritz recommends monitoring the tree. He stated there was a potential economic issue.

M/s, McNally/Blauvelt, to deny the removal of tree #38 based on the inability to make the findings. There is no immediate danger posed from this tree. The visual aspect to the neighborhood would be adversely affected.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo stated he was concerned about the insurance issue as it relates to the economic enjoyment of the property. Removal of a few of the trees would not adversely affect the neighborhood.

M/s, McNally/Blauvelt, to deny the removal of tree #37 based on the inability to make the findings. There is no immediate danger posed from this tree.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo reiterated his previous concerns.

M/s, McNally/Hauser, to deny the removal of tree #36 based on the inability to make the findings. Neither arborist recommended removal.

Ayes: All

M/s, McNally/Hauser, to deny the removal of tree #35 based on the inability to make the findings. Neither arborist found any problem with this tree.

Ayes: All

M/s, McNally/Hauser, to deny the removal of tree #33 based on the inability to make the findings. The removal would affect the health and welfare of the community. The tree does not pose a danger to life or property

Ayes: All

M/s, McNally/Blauvelt, to deny the removal of tree #32 based on the inability to make the findings. There is no immediate danger posed from this tree. The arborist recommends monitoring this tree.

Ayes: All

M/s, McNally/Hauser, to deny the removal of tree #31 based on the inability to make the findings. There is no immediate danger posed from this tree.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo reiterated his previous concerns.

M/s, McNally/Hauser, to approve the removal of tree #30 based on the ability to make the findings and the proximity of the tree to the house.

Ayes: Hauser, Matteo, McNally No: Blauvelt, Chair Wall

Commissioner Blauvelt stated the tree did not pose any danger to the foundation.

Commissioner Hauser noted the proximity of the tree to the house and stated the tree was of low aesthetic value.

M/s, Hauser/Blauvelt to approve removal of tree #23 based on the ability to make the findings. The tree does impact the house and affect the economic enjoyment of the property.

Ayes: All

Commissioner Blauvelt stated they did receive new information about the roof.

M/s, Hauser/McNally, to approve the removal of tree #25 based on the ability to make the findings. The tree is in very close proximity to the house and could affect the economic enjoyment of the property.

Ayes: All

M/s, Hauser/Blauvelt, to deny the removal of tree #26 based on the inability to make the findings. There is no immediate danger posed from this tree.

Ayes: Blauvelt, Hauser, Chair Wall No: Matteo, McNally

Commissioner Matteo stated he was concerned about the proximity to the house.

Commissioner McNally stated he was concerned about the potential damage to the glass roof.

M/s, Hauser/McNally, to deny the removal of tree #27 based on the inability to make the findings. There is no immediate danger posed from this tree.

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Commissioner Matteo reiterated his concern about the proximity to the house.

M/s, Hauser/Blauvelt, to deny the removal of tree #29 based on the inability to make the findings. There is no immediate danger posed from this tree

Ayes: Blauvelt, Hauser, McNally, Chair Wall No: Matteo

Recreation Director Wilkinson summarized the decision of the Commission: to allow the removal of trees #23, #25, and #30.

Mr. Rifkind asked if the other trees in the ring could be trimmed to mitigate any problems and whether or not a permit was needed. Chair Wall stated that was a good question. Commissioner Hauser stated he would rely on the professionals. Commissioner Blauvelt asked them to contact staff.

M/s, Hauser/Blauvelt, that the permit to remove trees #23, #25, and #30 is conditioned upon the use of appropriate techniques within the standard of care to avoid any harm to the remaining trees and their root structure.

Ayes: All

Chairperson Wall stated there was a 10-day appeal period.

Chairperson Wall thanked everyone for his or her comments.

BUSINESS ITEMS

1. Election of Chair and Vice Chair

M/s, Blauvelt/Hauser, to elect Chair Wall as Chair.

Ayes: All

M/s, McNally/Hauser, to elect Commissioner Blauvelt as Vice Chair.

Ayes: All

RECREATION DIRECTOR'S ORAL REPORT

There was no report.

COMMISSIONERS' REPORTS

There were no reports.

ADJOURNMENT

The meeting was adjourned at 10:52 p.m.

Respectfully submitted,

Toni DeFrancis, Recording Secretary