

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MEDINA**

In the Matter of the Application of)	No. TREE-23-043
)	
Steve Burnstead and Thomas Burnstead)	Burnstead Non-Administrative
)	Tree Activity Permit
)	
for a Non-Administrative)	FINDINGS, CONCLUSIONS, AND
<u>Tree Activity Permit</u>)	DECISION

SUMMARY OF DECISION

The request for a non-administrative tree activity permit to remove a single landmark tree, a coast redwood (*Sequoia sempervirens*) that is 50.2 inches in diameter at standard height, located at 116 Overlake Drive East, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 9 and January 12, 2024, using remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Andy Crossett, Medina Tree Consultant
Leo Suver, Applicant Representative
Steve Burnstead, Applicant
Betty Tong

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 2, 2024
2. Application, received August 24, 2024
3. Site Plan, received August 24, 2024
4. Tree Replacement Plan, received August 24, 2023
5. Public Notice Materials, various dates
6. Public Comments of Betty Tong, dated December 24, 2023
7. Photograph of Subject Tree, undated
8. City of Medina List of Significant Trees, dated July 31, 2015
9. WAC 197-11-800 (January 1, 2024)

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10. Site Photographs of Betty Tong, undated
11. Administrative Tree Activity Permit Application No. TREE-19-046, received July 9, 2019
12. ISA Basic Tree Risk Assessment Form, dated January 9, 2024
13. Tree Report for 116 Overlake Drive East, dated August 7, 2023
14. Summary of Burnstead Permits as Submitted, undated
15. Applicant's Additional Materials for Non-Administrative Tree Activity Permit No. TREE-23-043:
 - a. Letter of Justification for Removal of the Tree from Leo Suver, President, Steve Burnstead Construction, LLC, dated January 2, 2024
 - b. Letter of Support, Lonnie Olson, ISA Certified Arborist, Lonnsen Arbor Care, dated December 26, 2023
 - c. Site Plans for Proposed Development, undated
 - d. Bellevue Sewer Utility Records 116 Overlake Drive, dated April 5, 1967
 - e. Arborist Report, prepared by Lonnsen Arbor Care, dated May 4, 2019
16. Additional Information for Consideration by Hearing Examiner, prepared by Leo Suver, dated January 9, 2024
17. Site Plan, dated May 14, 2019

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

Application and Notice

1. Steve Burnstead and Thomas Burnstead (collectively, "Applicant") request a non-administrative tree activity permit to allow for the removal of a single landmark tree, a coast redwood (*Sequoia sempervirens*) that is 50.2 inches in diameter at standard height, located at 116 Overlake Drive East. The Applicant is seeking approval of a building permit application at the site and must remove the tree to accommodate the proposed structure. *Exhibit 2; Exhibit 3; Exhibit 15; Exhibit 16.*
2. The City received the application on August 24, 2023. The City determined the application was complete by November 27, 2023. The City provided combined notice of the application and the hearing on December 7, 2023. The notice was mailed to nearby property owners; posted on the subject property and at City Hall, the Medina Post Office posting board, and the City website; and published in the *Seattle Times* newspaper. The notice set a public comment period of 15 days. *Exhibit 1, Staff Report, page 3; Exhibit 5.*
3. The City received a single comment from neighbor Betty Tong. Ms. Tong commented that the subject tree sometimes drops branches during strong winds. She wrote that the tree had damaged her garage door two years in a row and took out her newly planted evergreen hedge. She worried that the tree's roots would damage her new driveway. She

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was afraid of the harm the tree might cause and had narrowly escaped being struck by a falling branch a few months prior to her comment. Ms. Tong supported removal of the tree. *Exhibit 6.*

State Environmental Policy Act

4. The City determined that the proposed tree activity was categorically exempt from review under the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington (RCW), in accordance with the statewide SEPA rule WAC 197-11-800(6). The City did not explain which provision of WAC 197-11-800(6) it believed exempted the tree removal from SEPA review. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan and Zoning

5. The subject property is designated Single Family Residential on the City's Comprehensive Plan Land Use Map. *Comprehensive Plan, Fig. 3.* City staff identified the following Comprehensive Plan policies as relevant to the proposal:
 - Residents are urged to consult with the City and with their neighbors on both removal and replacement of trees and tree groupings to help protect views and to prevent potential problems (e.g., removal of an important tree or planting a living fence) [CD-P5]
 - Clear cutting should not be permitted on property prior to development. [CD-P6].

Exhibit 1, Staff Report, page 2.

6. City staff also considered the following introduction to the Comprehensive Plan's Community Design Element:

Trees and vegetation help reduce the impact of development, by providing significant aesthetic and environmental benefits. Trees and other forms of landscaping improve air quality, water quality, and soil stability. They provide limited wildlife habitat and reduce stress associated with urban life by providing visual and noise barriers between the City's streets and private property and between neighboring properties. They also have great aesthetic value and significant landscaping, including mature trees, is always associated with well-designed communities.

It is important that citizens be sensitive to the impact that altering or placing trees may have on neighboring properties. Trees can disrupt existing and potential views and access to sun. Residents are urged to consult with the city and with their neighbors on both removal and replacement of trees and tree groupings. This will help to protect views and to prevent potential problems (e.g., removal of an important tree or planting a living fence). Clear cutting should not be permitted on a property prior to development.

Exhibit 1, Staff Report, page 2.

7. The property is zoned R-20. Single-family residences and accessory dwelling units (ADUs) are allowed uses in this zone. *Medina Municipal Code (MMC) 16.21.030, Land Use Table. Exhibit 1, Staff Report, page 1.*

Existing Property, Surrounding Uses and Critical Areas

8. The subject property has an area of 19,960 square feet, as confirmed by the Applicant's survey in Exhibits 16 and 17. The parcel is currently undeveloped; however, the Applicant is seeking building permits to construct a single-family residence and ADU. The site is partially forested, with some 19 significant trees currently on the property.¹ The Applicant's justifications for the removal of the coastal redwood are that the species is not native; that the tree's root system has affected, and will continue to affect, the performance of a nearby public sewer main; and that it grows too aggressively. *Exhibit 3; Exhibit 11; Exhibit 13; Exhibit 15; Exhibit 16; Exhibit 17.*
9. In 2019, the City issued administrative tree removal permit no. TREE-19-046 to remove 24 significant trees out of a total population at that time of 39 significant trees, leaving 15 significant trees. In August 2023, the Applicant sought approval of an administrative tree removal permit to remove a further 14 significant trees—however, the total population of significant trees in 2023 was given as 19 significant trees, not the 15 significant trees that remained after the 2019 permit. The City is reviewing the August 2023 application simultaneously with this application for a non-administrative permit to remove the coastal redwood. *Exhibit 1, Staff Report, page 5; Exhibit 11; Exhibit 13.*
10. The 2019 permit required the Applicant to retain seven tree units on the property.² The August 2023 permit application calculated that the Applicant would need to retain eight tree units on the property. *Exhibit 11; Exhibit 13.*
11. Approximately half of the subject property is within the Shoreline Jurisdiction and Fish and Wildlife Habitat Conservation Area associated with Lake Washington. The tree that has been requested to be removed is not within this critical area. *Exhibit 1, Staff Report, page 1.*
12. The surrounding properties on three sides are zoned R-20 and developed with single-family houses. To the east is Lake Washington. *Exhibit 1, Staff Report, page 2.*

Landmark Tree Removal Criteria

¹ 2019 permit TREE 19-046 indicates there are 15 significant trees on the property, while the August 2023 administrative tree activity permit application indicates there are 19 significant trees on the property. *Exhibit 1, Staff Report, page 5; Exhibit 11; Exhibit 13.*

² Tree units are defined in MMC 16.52.090(C).

13. City staff reviewed the proposal against the criteria for the removal of a landmark tree and made the following observations and recommendations:
- The tree is greater than 50 inches in diameter and therefore meets the definition of a landmark tree.
 - For Landmark Trees, the quantity of replacement inches is calculated by multiplying the diameter breast height of each subject landmark tree by 100 percent to establish the minimum number of replacement inches, with all fractions being rounded up to the next whole number.
 - In lieu of planting the replacement trees, the Director or Designee may authorize an applicant to satisfy the tree replacement requirements by paying a fee-in-lieu of supplemental plantings provided: 1) There is insufficient area on the lot or adjacent right-of-way to meet the number of replacement inches prescribed by MMC 16.52.090; or 2). Tree replacement provided within public right-of-way or a city park in the vicinity will be of greater benefit to the community.
 - In August 2023 an administrative tree activity permit application was submitted indicating there were nineteen (19) significant trees on the property. The application proposed the removal of 14 significant trees, including the subject coast redwood. This would leave five significant trees on the property and a required tree unit deficit of 4.25 tree units (TU). Staff believed this was antithetical to the Comp Plan as the lot has essentially been clear cut and the comprehensive plan states that “Clear cutting should not be permitted on a property prior to development.” Additionally, the subject tree is aesthetically pleasing and offers some level of a “visual” barrier between properties. It will take many years for the proposed replacement trees to offer a similar benefit.
 - The subject coastal redwood is healthy with a good structural condition. It is still relatively young with an estimated age in the 65 – 80-year range, however, this is a species that can live well over 2,000 years. It would be considered an excellent example of species and positively “contributes to the residential character of the city”. Therefore, the removal of this tree is not in the public interest in maintaining an attractive environment.
 - In terms of ensuring the safety of the local community, there are no apparent significant defects that could contribute to catastrophic tree or tree part failure under normal weather conditions and based on the risk assessment methodology outlined by the International Society of Arboriculture (ISA), would fall within the "low" risk category.
 - The proposed landmark tree removal will likely not be materially detrimental to nearby properties. It may be materially beneficial to 8847 Overlake Dr E, as it could potentially open up a view to the lake.
 - The removed tree is proposed to be mitigated with a replacement tree selected from list 5 of the Suitable Tree Species Lists. The tree removal

mitigation will also include a contribution to the Medina Tree Fund for lost public benefit between the larger tree being removed and smaller trees being planted.

Exhibit 1, Staff Report, pages 5 and 6.

14. Staff concluded that the proposed tree removal met the strict requirements of the code, chapter 16.52 MMC, but not its purpose and intent. Staff recommended that the tree removal application be approved subject to conditions for tree replacement and mitigation payments. *Exhibit 1, Staff Report, pages 6 and 7.*

Testimony

15. Andy Crossett, Tree Consultant for the City, testified that the coast redwood has a diameter at standard height of 50.2 inches, some 80 to 100 feet in height, perhaps 67 years old, which he called not particularly old for this species. The tree qualified as a landmark tree based on diameter. The tree was planted; it did not propagate naturally.

Mr. Crossett testified that retention of the tree would impede development, because such a large tree would require a very large tree protection area. Mr. Crossett testified that this property was a lot “under development,” for purposes of the tree code, for a building permit.

Mr. Crossett testified that a tree removal permit had been issued in 2019 to remove 24 out of 39 significant trees. In August 2023, there was another application, this time to remove 14 out of 19 significant trees. Because the coast redwood is a landmark tree, however, a different, non-administrative tree removal permit is required.

Mr. Crossett testified that removal of the coast redwood was not consistent with the public interest. The tree is beautiful and poses only a low safety risk. The tree provides canopy, which is an environmental benefit, although he acknowledged canopy could be replaced through replanting. He did not believe the branches falling onto Ms. Tong’s property constituted a risk to her property. Mr. Crossett had followed the ISA process for this tree and had determined that the tree was low-risk. He reviewed Ms. Tong’s photos in Exhibit 10 and testified that he believed the tree was safe.

Mr. Crossett explained the calculations for payment in lieu of replanting: add up the caliper of trees to be removed, and add up the total caliper of trees to be replanted. Multiply the difference between the two by \$400. In this case, with 51 inches to be removed, and 24 inches proposed for replanting, the difference would be 27. Multiplied by \$400, it yields a payment requirement of \$10,800.

On the second hearing day, after the 2019 permit and the 2023 permit application were entered into the record, Mr. Crossett testified that the number of tree retention units

required in the 2019 permit was seven, and the number required in the 2023 permit application was eight. He did not believe that the non-administrative tree activity permit would cause the number of tree units required to be retained to fall below seven, the number required in the first permit. *Testimony of Andy Crossett.*

16. Leo Suver, Applicant Representative, testified that he is the president of Burnstead Construction Company and a co-applicant. He read a statement of justification (later provided as Exhibit 15A). He confirmed that the tree removal was necessary because of a building permit application to construct an ADU. At this point, his building permit and civil permit had been approved pending approval of the tree permit. The tree was growing aggressively and impacting a sewer main. Its roots also affected a neighbor's driveway. The subject property is a narrow lot, just 55 feet wide, leaving little room for development. The coast redwood, with its large root zone, created a significant challenge to development. *Testimony of Leo Suver.*
17. Steve Burnstead, Applicant, testified that the 2019 tree permit was for a combination of demolishing a then-existing cabin as well as removal of several trees. Mr. Burnstead characterized these trees as "pretty insignificant," although he did not dispute they met the definition of significant trees under the code. He believed he had met the tree retention requirements of the 2019 permit and expected that he would still meet the tree retention requirements even under the current application. It had always been his intention, dating back to 2019, to develop the lot. Mr. Burnstead reminded the Hearing Examiner that he had been following direction from the City for over four years. *Testimony of Steve Burnstead.*
18. Betty Tong testified that she lives next to the subject property. She offered pictures, admitted after the hearing as Exhibit 10, showing branches that had fallen from the coast redwood onto her property. She believed the tree was unsafe, especially during windstorms. One large branch had almost hit Ms. Tong's head. The tree often dropped debris onto her property, including once hitting one of her hedges, which was destroyed. Ms. Tong worried about her safety and that of her family and guests. *Testimony of Betty Tong.*

Staff Recommendation

19. Mr. Crossett testified that he recommended approval of the application, with the conditions in the staff report. Mr. Burnstead did not object to any of the proposed conditions. *Exhibit 1, Staff Report, page 7; Testimony of Andy Crossett; Testimony of Steve Burnstead.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide non-administrative tree activity permit applications. *MMC 16.72.090; MMC 16.80.050(C); chapter 2.72 MMC*. Here, where the request is to remove a tree with a diameter at standard height of greater than 50 inches, a non-administrative tree activity permit is the correct procedure. *MMC 16.52.160(E)*.

Criteria for Review

The Hearing Examiner may approve a non-administrative tree removal application only if the following criteria are satisfied:

1. The proposal is compatible with chapter 3, community design element, of the comprehensive plan;
2. The proposal is consistent with the public interest in maintaining an attractive and safe environment;
3. The tree removal will have no materially detrimental effects on nearby properties;
4. The tree has not been granted special protection pursuant to MMC 16.52.080;
5. All requirements set forth in chapter 16.52 MMC are satisfied;
6. All other ordinances, regulations and policies applicable to tree removal are followed

MMC 16.72.090(E).

Relevant to this application, chapter 16.52 MMC requires:

Multiple applications of the tree preservation requirements in this chapter over a ten-year period shall not cause the number and size of trees required to be retained to be reduced below the number and size of trees required to be retained with the first application.

MMC 16.52.020(5).

Tree replacement measures for landmark trees are as follows:

- a. The quantity of replacement inches is calculated by multiplying the diameter breast height of each subject landmark tree by 100 percent to establish the minimum number of replacement inches; and
- b. All fractions of this section shall be rounded up to the next whole number.

MMC 16.52.080(B)(2).

In lieu of planting the replacement trees prescribed in subsection (B) of this section, an applicant may satisfy the tree replacement requirements by meeting the criteria set forth in MMC 16.52.180.

MMC 16.52.080(C).

The director or designee may authorize payment of a fee-in-lieu provided:

1. There is insufficient area on the lot or adjacent right-of-way to meet the number of replacement inches prescribed by MMC 16.52.090; or

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2. Tree replacement provided within public right-of-way or a city park in the vicinity will be of greater benefit to the community.
3. Fees shall be provided in lieu of on-site tree replacement based upon the following:
 - a. The expected tree replacement cost including labor, materials, and maintenance for each replacement tree; and
 - b. The most current council of tree and landscape appraisers guide for plant appraisal.
4. The applicant executes a written agreement with the city demonstrating compliance with the criteria in this section.

MMC 16.52.180(A).

Conclusions Based on Findings

With conditions, the non-administrative tree activity permit would comply with the criteria in MMC 16.72.090(E). The public was given reasonable notice and opportunity to comment. One member of the public commented in support of removal of the coast redwood on the grounds that it poses a hazard to her and her property. The proposed tree removal is being performed in conjunction with an application for one single-family residence with a detached ADU, which is categorically exempt from SEPA review under MMC 14.04.010(A)(1)(c)(i) and WAC 197-11-800(6)(a).

Notwithstanding the analysis in the staff report, the Hearing Examiner concludes that the proposal complies with chapter 3 of the Comprehensive Plan, as required by MMC 16.72.090(E)(1). The relevant policies are:

- Residents are urged to consult with the City and with their neighbors on both removal and replacement of trees and tree groupings to help protect views and to prevent potential problems (e.g., removal of an important tree or planting a living fence) [CD-P5]
- Clear cutting should not be permitted on property prior to development. [CD-P6]. Here, the Applicant has consulted with the City on removal and replacement and has the support of the only neighbor who commented. CD-P5 is satisfied. The Applicant is not “clear cutting” the property, because the Applicant will replant in accordance with MMC 16.52.080(B)(2). The policy CD-P6 is satisfied. Even if the Applicant were clear-cutting, the tree removal is being done in conjunction with development, which is allowed under CD-P6.

The Hearing Examiner also disagrees with Mr. Crossett’s testimony that removal of the tree is inconsistent with the public interest. Certainly, preserving the tree would be consistent with the public interest because, as he testified, this is a large, healthy tree with a wide canopy that provides environmental and aesthetic benefits. The Hearing Examiner cannot conclude, however, that the public interest would be harmed by the removal of this tree, considering that the Applicant will replant and pay into the City’s tree fund, considering the non-native species that is at stake, and considering the apparent lack of public interest in preserving this tree, as

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evident from the lack of objections to its removal. The replantings and payment into the tree fund are “consistent with the public interest,” even if preserving the tree would also be consistent with the public interest. The Hearing Examiner does believe, based on Mr. Crossett’s testimony, that the public interest would be better served by retaining the tree, but the standard in MMC 16.72.090(E)(2) is merely that the proposal be “consistent” with the public interest, not that it be in the highest possible public interest. Because this proposal, with conditions, is not inconsistent with the public interest, it is allowable.

The tree removal will have no detrimental effect on neighboring properties. The Hearing Examiner is persuaded by Mr. Crossett’s testimony that this tree is not hazardous, and so its removal may not be of very much benefit to neighboring properties (notwithstanding the inconvenience and trepidation of Ms. Tong). However, there is no reason to believe the removal would cause any harm to neighboring properties, and so removal is allowable.

The tree has been given special protection as a landmark tree under MMC 16.52.080. Removal of landmark trees, however, is allowable pursuant to MMC 16.52.080(B)(2), provided replacement or payment in lieu of replacement is provided. That standard is met here because the Applicant’s combination of 24 caliper inches proposed for replanting, plus a payment of \$10,800, offsets the loss of the coast redwood’s 51 caliper inches, as provided in MMC 16.52.080(B)(2) and (C), and MMC 16.52.180(A).

The other provisions of chapter 16.52 MMC are also satisfied. Under both its 2023 permit application and this non-administrative permit application, the Applicant proposes to retain eight tree units, following removal and replanting. This is a higher level of retention than the seven units required to be retained in the 2019 permit. Therefore, the Applicant satisfies the requirement of MMC 16.52.020(5) that “[m]ultiple applications of the tree preservation requirements in this chapter over a ten-year period shall not cause the number and size of trees required to be retained to be reduced below the number and size of trees required to be retained with the first application.” There appear to be no other relevant ordinance related to the tree removal that the Applicant must meet. *Findings 1–19.*

DECISION

Based on the preceding findings and conclusions, the request for a non-administrative tree activity permit to remove a single landmark tree, a coast redwood (*Sequoia sempervirens*) that is 50.2 inches in diameter at standard height, located at 116 Overlake Drive East, is **APPROVED**, subject to the following conditions:

1. The Applicant shall plant at least twelve (12) replacement trees selected from list 5 of the City of Medina Lists of Suitable Trees within 18-months of permit issuance under this non-administrative tree activity permit. The replacement trees shall meet all of the standards set forth in MMC 16.52.200(E)(2). The Applicant shall coordinate selection and the planting location of the replacement trees with the City Tree Consultant.

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2. A contribution of \$10,800 shall be made to the Medina Tree Fund prior to removal of the coast redwood.
3. The Applicant shall be responsible for all costs associated with the planting and maintenance of replacement trees for five years. The Applicant shall take necessary measures to ensure that supplemental trees remain healthy and viable for at least five years after inspection by the City and the owner shall be responsible for replacing any supplemental trees that do not remain healthy and viable for the five years after inspection by the City.

Decided this 22nd day of January 2024.

A handwritten signature in black ink that reads "Alex Sidles". The signature is written in a cursive, flowing style.

ALEX SIDLES
Hearing Examiner