

FOR SPRAB MEETING OF:
AGENDA ITEM NO.:

February 13, 2020
6.a

TO: SALEM PARKS AND RECREATION ADVISORY BOARD
THROUGH: ROBERT D. CHANDLER, PhD, PE, ASSISTANT PUBLIC WORKS DIRECTOR
FROM: GLENN J. DAVIS, PE, CFM, CHIEF DEVELOPMENT ENGINEER
SUBJECT: APPEAL OF STREET TREE REMOVAL DECISION (19-121920-TR)

ISSUE:

Should the Salem Parks and Recreational Advisory Board (SPRAB) uphold the decision of the Public Works Director and deny the appeal of the applicant regarding the applicant's request to remove a street tree located near 120 Commercial Street NE.

RECOMMENDATION:

Uphold the decision of the Public Works Director and deny the appeal of the applicant regarding the applicant's request to remove a street tree located near 120 Commercial Street NE.

SUMMARY:

There are currently two street trees located along the frontage of the property at 120 Commercial Street NE. An applicant submitted a tree removal permit for the northerly tree based on sign visibility, ADA standards, and the health of the tree. The Public Works Director denied the tree removal permit because none of the tree removal criterion of *Salem Revised Code* (SRC) 86.090 were met. After the tree removal permit was denied, the City Arborist, in coordination with the property owner, pruned the tree to minimize the negative impacts of the tree while ensuring that the tree remains in good health. The applicant filed an appeal of the Director's decision to SPRAB per the provisions of SRC 86.095.

Staff finds that neither the original application nor the information contained in the appeal demonstrate that any of the tree removal criteria contained in SRC 86.090 are met. Accordingly, staff recommends that SPRAB uphold the Director's decision to deny the tree removal permit.

FACTS AND FINDINGS:

1. The subject property is located in Ward 1 and the Central Area Neighborhood Development Organization (CAN-DO).
2. The property owner, CH Reed, LLC, applied for a street tree removal permit on June 25, 2019. The application included a description of the work to be completed and addressed concerns over visibility of the building face. The application and attachment are provided as Exhibit A.

3. The Public Works Director issued a Notice of Decision (Exhibit B) on October 16, 2019, denying the tree removal permit application. The denial was based on the tree removal criteria listed in SRC 86.090. The denial was based on a determination that the proposal did not meet any of the tree removal criteria in SRC 86.090.
4. After receiving the Notice of Decision, the applicant filed an appeal on November 14, 2019 (Exhibit C). The applicant cites tree health, pedestrian access limitations, potential for property damage, emergency services, and historic preservation goals as a basis for approving the tree removal permit.
5. The City Arborist submitted a written response to the applicant's appeal (Exhibit D). The City Arborist found that the tree is in good health and therefore does not meet the tree removal criteria in SRC 86.090(a)(1) through (7).
6. The City's Deputy Fire Marshal submitted a written response to the applicant's appeal (Exhibit E). The Deputy Fire Marshal found that the Salem Fire Department can respond effectively without delay if the tree remains in place.
7. The tree was not adversely impacted by construction and does not adversely impact adjacent infrastructure and therefore does not meet the criterion of SRC 86.090(a)(8) or SRC 86.090(a)(9).
8. SRC 86.090(c)(2) states that the City shall not permit the removal of a City tree for improvement or maintenance of views, unless criteria for a variance has been approved.
9. The City's Historic Preservation Officer submitted a written response to the applicant's appeal (Exhibit F). The Historic Preservation Officer found that the tree is not identified as contributing to the significance of the historic district.
10. Pursuant to SRC 86.095(c)(1), staff provided written notice of the appeal to CAN-DO and posted notices of the appeal as near as practicable to the tree at issue for 30 calendar days prior to the public hearing.
11. Pursuant to SRC 86.095(e), appeals for street tree removal decisions are referred to SPRAB. In its decision, SPRAB may affirm, amend, or rescind the action, or refer the matter to staff for additional information.

- Exhibits:
- A. Tree Removal Application
 - B. Decision of Denial
 - C. Notice of Appeal Document
 - D. Comments from City Arborist
 - E. Comments from Salem Deputy Fire Marshal
 - F. Comments from Historic Preservation Officer

Street Tree Permit Application

CITY OF *Salem*
AT YOUR SERVICE
Public Works Department

Please send the completed application to the following address:

City of Salem
Public Works Department Development Services
555 Liberty Street SE, Room 305
Salem OR 97301-3513

For Office Use Only

Tree Permit #

AMANDA Permit #

19-121920-TR

SECTION 1: GENERAL INFORMATION

Site Address 120 Commercial St NE Salem OR 97302
Trees must be on property owner's frontage.
Property Owner Name CH Reed LLC
Email d.hauhofer@pennbrooke.com Phone _____
Mailing Address 904 Silver Spur Rd #244, Rolling Hills Estates, CA 90274
Street or PO Box City State Zip
Is the property owner the contractor? If no, provide the contractor's contact information. ☐ Yes ☒ No
Contractor's Name Rich Duncan Construction
Day Phone 503-779-4753 Evening Phone _____
Email wes@RichDuncanConstruction.com Fax _____

SECTION 2: WORK TO BE PERFORMED

Please indicate the type of work to be performed.

☐ Prune ☐ Plant ☒ Removal ☐ Other _____

Species/Name Cherry Quantity 1

Description of Tree(s) Location Tree in city side walk @ NW Corner of building.

Proposed Start Date ASAP Proposed Completion Date ASAP

Description of work to be completed (If removal is requested, include reason for removal):

See Attached.

Note: A work in right-of-way application may be required after review of street tree permit application.

Property Owner Signature [Signature] Date 8/25/19

There is concern that the tree blocks the address numbers at the front of the building causing issues if the fire department should ever need to be called. On the approved set of prints the directive reads "Approved numbers or addresses shall be placed on all new and existing premises in such a manner as to be plainly visible from the street or road fronting the property..." With this tree in the way you won't be able to see the address numbers until you are already past the building and unable to turn into the appropriate locations. Also, as it stands this 150+ year old building is covered from street view and the public cannot see and/or appreciate it because of that. The aim of HLC is to preserve the historic aspect of our town and by removing and planting something that is like the rest of downtown would amplified and have a greater impact on the public's perception and experience of downtown Salem.

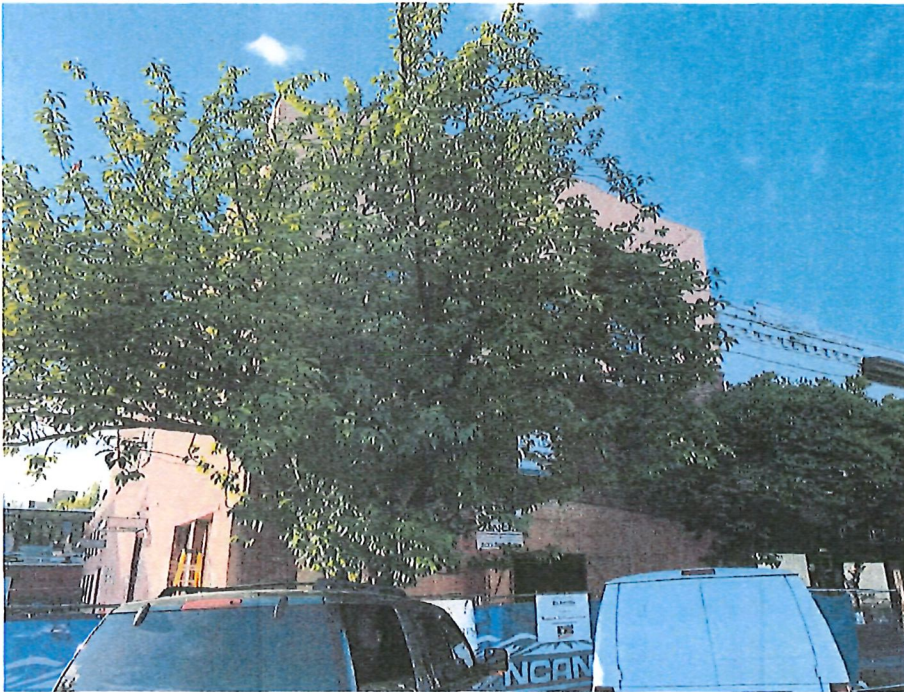




EXHIBIT B

Public Works Department

555 Liberty Street SE / Room 325 • Salem OR 97301-3513 • Phone 503-588-6211 • Fax 503-588-6025

NOTICE OF DECISION **TREE REMOVAL PERMIT**

EFFECTIVE DATE: November 15, 2019 *(if no appeal is filed)*

STREET TREE REMOVAL PERMIT APPLICATION NO.: 19-121920-TR

NOTICE OF DECISION DATE: October 16, 2019

REQUEST: A Street Tree Removal Permit application to remove one (1) Cherry tree, located within the right-of-way.

APPLICANT: Rich Duncan Construction

LOCATION: 120 Commercial Street NE Salem, OR 97301 - Marion County Assessor's Map and Tax Lot number: 073W27AB08000

CRITERIA: Criteria for street tree removal is found in SRC 86.090(a).

FINDINGS: The tree proposed for removal does not meet any of the criteria for street tree removal described in SRC 86.090(a). The tree is healthy and sound, construction will not impact the health of the tree, and the tree does not have an adverse effect on adjacent infrastructure.

DECISION: The Public Works Director **DENIED** Street Tree Removal Permit Application No. 19-121920-TR subject to the applicable standards of the Salem Revised Code.

Case Manager: Jennifer Scott, jrscott@cityofsalem.net

This decision is final unless written appeal is filed with the City of Salem Public Works Division, Room 325, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., Thursday, November 14, 2019. The notice of intent to appeal must state the basis of the appeal and why the decision was in error. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem Parks and Recreation Advisory Board will review the appeal at a public hearing. After the hearing, the Salem Parks and Recreation Advisory Board may affirm, amend, or rescind the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Public Works Department, Room 325, 555 Liberty Street SE, during regular business hours.

***Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6211***

EXHIBIT C



555 Liberty St SE
Room 325
Salem, OR 97301-3503

Payment #: 10485612

Folder #: 19-121920-TR

Payment Date: Nov 14, 2019

Check #: cr016904

STREET TREE PERMIT

RECEIPT

Customer

RICH DUNCAN CONSTRUCTION INC
2295 RURAL AV S
SALEM OR 97302

Payment for address: **120 COMMERCIAL ST NE**

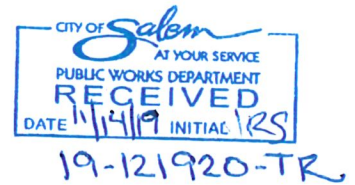
Description	Billed Fees	Previously Paid	This Payment	Amount Refunded	Balance Due
Automation Surcharge	\$5.00		\$5.00		
Tree Variances / Appeals	\$270.00		\$270.00		
Total for invoice # 1057016:	\$275.00	\$0.00	\$275.00		\$0.00
RECEIPT TOTALS:	\$275.00		\$275.00	\$0.00	\$0.00

Total Paid: \$275.00

PAY ONLINE: Have you heard about SPLASH? That is Salem's Permitting, Licensing, and Application Services Home website. You can make this payment online using your VISA or MasterCard if you become a registered SPLASH user. If you are interested, go to <http://splash.cityofsalem.net>

11/14/19

Tree Removal Appeal



To Whom It May Concern,

We would like to formally appeal the decision related to application no.: 19-121920-TR. The request was to remove one overgrown and dangerous Cherry Tree in the right of way at 120 Commercial St. NE.

We think the decision was made in error for several reasons. The primary factor is public safety. The tree is overgrown, one of the largest (if not the largest of its kind) downtown. This may be seen as unique but if the condition of the adjacent Cherry tree is any indication this is cause for concern. The adjacent tree was removed from private property, the tree was largely hollowed out in its core due to a termite infestation. The tree we are advocating be removed is only about 45' away. It is not far fetched to assume the infestation migrated to this tree which creates a risk for the building and the public. The removal of this tree also provides a safer right of way for the public and those with specific access requirements. The tree trunk is multiple times the size of any other tree downtown. This takes up a very large portion of the planter box (approximate box sized 6'x6'). During congested times this tree is creating a bottle neck because of its increased size within that box and will lead to ADA access issues at the corner of the building for those with ADA needs, as well as an unnecessary tripping hazard with the enlarged root base and trunk. The issue of congestion is only going to get worse with the increasing popularity of the Masonry Grill. This means longer wait times which leads to more and more people passing time in the public right of way as they wait for their seats. Lane restriction is already a big concern and is only going to become a larger going in to the warmer months.

The tree has been trimmed in the time since the formal denial of the application. Although this has temporarily taken some of the limbs back from the building the possibility of building or pedestrian damage remains high if this is not regularly addressed and maintained by the city. Without regular maintenance limbs could easily become brittle and cause property damage or worse cause injury to passersby. It should be noted that simply trimming the limbs only addresses a small portion of the concerns with this tree. This method of mediation does not address the large trunk size creating ADA access issues.

The next concern is that the tree obstructs first responder visibility of the building. Although numbers are posted on the building the tree in the spring, summer, and early fall months created an obstructed view. This could lead to confusion or delays in providing timely responses for emergency services. This means delayed response times to people in the building who may require emergency medical attention as well as additional building damage in the event of a fire.

Lastly, even though it does not fit your criteria for removal this fits with the goal and heart of what HLC is aiming to achieve. "The purpose of this chapter is to identify, designate, and preserve significant properties related to the community's prehistory and history; encourage the rehabilitation and ongoing viability of historic buildings and structures; strengthen public support for historic preservation efforts within the community; foster civic pride; encourage cultural heritage tourism; and promote the continued productive use of recognized resources..." With this purpose in mind, not only does this tree threaten the preservation of this historic property but it dilutes public support and civic pride in this

structure. When you can not see the lengths the city and the owner have gown through to preserve, rehabilitate, and rejuvenate the productive use of the space/building as well as the time and money invested in making the downtown experience more enjoyable for the public, you defeat the purpose of what HLC stands for.

Thank you for your time and consideration of this appeal,

Rich Duncan Construction



Public Works Department

555 Liberty Street SE / Room 325 • Salem OR 97301-3513 • Phone 503-588-6211 • Fax 503-588-6025

NOTICE OF DECISION

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DECISION: The Public Works Director **DENIED** Street Tree Removal Permit Application No. 19-121920-TR subject to the applicable standards of the Salem Revised Code.

Case Manager: Jennifer Scott, jrscott@cityofsalem.net

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***Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6211***



MEMO

TO: Jennifer Scott, Program Manager
Public Works Department

FROM: Thomas Bradley, ISA Certified Arborist PN-8780A, Project Coordinator
Public Works Department *[Signature]*

DATE: December 5, 2019

SUBJECT: EVALUATION OF TREE REMOVAL APPLICATION 19-121920-TR
PROPOSAL

Applicant is proposing to remove the Cherry tree located in the City right-of-way near the northwest corner of the building addressed as 120 Commercial Street NE, Salem Oregon 97301.

SUMMARY OF FINDINGS

The referenced Cherry tree does not meet the tree removal criteria found in SRC 86.090(a)(1) through (7).

CRITERIA AND FINDINGS

Criteria—City Tree Removal Criteria (SRC 86.090(a)):

(1) The tree is dead;

Finding— The tree is not dead. Healthy buds and leaves were found throughout the canopy of the tree.

(2) The tree is in an advanced state of decline;

Finding— The tree is not declining. Branch ends contain viable buds/leaves and the tree canopy contains no dead limbs. Dieback of the canopy was not noticed.

(3) The tree is structurally unsound and poses an imminent risk to persons or property;

Finding— The tree is structurally sound. Branch attachments are good. No indication of rot found in the trunk. No dead limbs found in the tree canopy. Structural roots have not been disturbed.

(4) The tree is infected with an acute fatal disease;

Finding—There are no known diseases of Cherry in the Willamette Valley that are invasive or exotic. Most native cherry diseases tend to infect the foliage, blossoms, buds, and twigs of Cherry, are endemic to the Willamette Valley and are chronic in nature. There were no acutely fatal diseases found on this tree.

(5) The tree is infested with an insect that cannot be treated successfully or there is a high likelihood that the infestation could spread and kill other trees or vegetation in the immediate vicinity;

Finding—There are no known exotic or invasive insects in the Willamette Valley that kill or attack Cherry trees. There are no signs of an insect infestation on this tree.

(6) When City trees have been planted too close to each other based on administrative rules and the spacing causes an adverse effect on neighboring trees;

Finding—There is roughly 35 feet between the Cherry tree and the next tree to the South. There is roughly 55 feet between the Cherry tree and the next tree to the North. This is adequate spacing for proper tree development.

(7) When past pruning and other tree maintenance practices has destroyed the natural shape of the tree or caused it to go into decline;

Finding—The Cherry tree is not in decline nor has it been improperly pruned.

cc: File



EXHIBIT E

December 5, 2019

Jennifer Scott
Program Manager
City of Salem – Public Works Department
555 Liberty St SE
Suite 325
Salem, Oregon 97301

RE: 19-121920-TR Appeal

An appeal has been requested in regard to the City of Salem's denial of the tree removal at 120 Commercial St NE. As part of the appeal, one of the applicants concerns involves the obstruction of the address numbers installed on the structure. The concern is that the tree will delay emergency response to the structure due to the address number being visibly restricted.

The address numbers are required by Oregon Fire Code Section 506 on the street frontage side of the structure. The address specifically identifies the structure for first responders, customers and delivery companies.

The structure currently meets the requirements for addressing. Although the address numbers may be obstructed at periods of time during vehicle movement, it is not completely obstructed and can be seen from the street and meets the requirements of the Oregon Fire Code.

The Salem Emergency Services vehicle are equipped with Mobile Data Computers (MDC's) that are used during emergency responses. The computers have GIS based mapping and when a call is received the specific address is highlighted on the map to assist in response to the specific address.

The Salem Fire Department does not have an opinion in regard to the decision of the tree remaining in place or whether it is removed. The Salem Fire Department can respond effectively without delay if the decision is for the tree to remain in place based on the current address placement and technology used by the emergency responding agencies.

Respectfully,

Jeffery L Mack
Deputy Fire Marshal
Salem Fire Department



MEMO

TO: Jennifer Scott, Program Manager
Public Works

FROM: Kimberli Fitzgerald, Historic Preservation Officer
Community Development

DATE: December 6, 2019

SUBJECT: 120 Commercial Street NE, Tree in Right of Way

The tree proposed for removal adjacent to the western façade of 120 Commercial Street NE is within the public right of way and located within Salem's Downtown National Register Historic District. Historic Design Review approval for removal of this tree would be required under SRC 230.020, and the applicant would be required to meet the applicable criterion in SRC 230.075 *Streetscape Standards*.

While no application has yet been received by the City of Salem's Planning Administrator requesting approval to remove this tree, according to our records, the tree is not yet 50 years old and not identified as contributing to the significance of the historic district. Therefore, should an application be received requesting removal and replacement of this tree, it would be potentially feasible that the applicant could meet the applicable criterion under 230.075 and demonstrate that removal of this tree would not adversely impact the historic district and the Planning Administrator could issue an Administrative Decision approving the removal of the tree under SRC 230.

Kimberli Fitzgerald, AICP, RPA
Historic Preservation Officer / City Archaeologist
Community Development Department
City of Salem
Phone: (503) 540-2397
kfitzgerald@cityofsalem.net

cc: Lisa Anderson-Ogilvie, Deputy Community Development Director/Planning
Administrator