



Item No. 6 Town of Atherton

CITY COUNCIL STAFF REPORT – APPEAL HEARING

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ANDREAS BOOHER, DEPUTY CITY ATTORNEY

DATE: MAY 15, 2024

SUBJECT: CONSIDER AN APPEAL OF COSTS FOR DEAD AND DANGEROUS TREE REMOVAL AT 175 RAVENSWOOD AVENUE

INTRODUCTION

Conduct a hearing to consider the appeal lodged by Dean Foster (“Appellant”) regarding the costs incurred by the Town of Atherton for the removal of a dead and dangerous tree (“Subject Tree”) from the right-of-way immediately adjacent to his property located at 175 Ravenswood Avenue. The Town undertook removal of the Subject Tree after the Appellant failed to act following issuance of a Notice and Order to Abate (CE-23-433) calling for removal of the Subject Tree. (See, Attachment 1).

The City Council is requested to determine whether property owners are responsible for trees that are within the right-of-way adjacent to their property. If the answer is yes, then the Council is to determine whether the Appellant had a duty to remove the Subject Tree, failed to do so, and therefore is responsible to pay the Town \$6,900 in costs associated with the removal of the Subject Tree pursuant to Section 8.08.010 and Section 12.10.020 of the Atherton Municipal Code (“AMC”).

RECOMMENDATION

Staff recommends that the Council denies the appeal and require Mr. Foster to pay the full amount of costs for the removal of the tree (\$6,900).

BACKGROUND

Relevant Portions of the Atherton Municipal Code

Over the years, the Council has determined that heritage trees are an important aspect of Atherton’s character. To protect Atherton’s character, the Council has codified this determination in Section 8.10.010 of the AMC, which provides, in part:

The town finds and declares as follows:

A. The town is endowed with and forested by oaks, redwood, bay and other trees.

B. The preservation of these trees is essential to the health, welfare and quality of life of the citizens of the town....:

While the protection and preservation of heritage trees is paramount in most instances, it must give way when health and safety concerns are implicated. Section 8.10.030-D of the AMC states that the heritage tree ordinance does not supersede the provisions of Chapter 8.08 of the AMC related to dead and dangerous trees.

Section 8.08.010 states that property owners are responsible to remove dead and dangerous trees on their property.

Section 12.10.020 further spells out the responsibility of property owners to maintain street trees adjacent to their property:

A. The property owner of a lot or portion of a lot adjacent to or fronting on any portion of a street shall maintain and replace, if necessary, any street trees, shrubs, hedges or other landscaping adjacent to or fronting on the subject property in such condition that the street trees, shrubs, hedges or other landscaping comply with this chapter. Each property owner shall plant and/or replace any removed or otherwise missing street trees in accordance with the requirements of subsection C of this section.

B. A property owner required by this section to plant, maintain, and replace, if necessary, trees, shrubs, hedges and other landscaping shall owe a duty to members of the public using streets to maintain such trees, shrubs, hedges or other landscaping in a safe and nonhazardous condition for users of the streets. For purposes of this section, maintenance of trees, shrubs, hedges and other landscaping includes, but is not limited to: watering, pruning, fertilizing, pest control, removal of branches, leaves, and other debris, weed abatement, and protection of the critical root zone.

C. A property owner required by this section to maintain any street trees, shrubs, hedges, or landscaping shall comply with the following:

- 1. Immediately notify the director of public works of any dangerous or hazardous conditions of the adjacent public right-of-way;*
- 2. Provide the necessary maintenance so that the street tree, shrub, hedge or landscaping is not in a hazardous condition or in a condition that will likely become a hazardous condition;*
- 3. Provide a minimum eight-foot vertical pedestrian clearance from the top of the sidewalk and a minimum fourteen-foot vertical vehicular clearance from the top of the street to any part of a tree;*

4. Provide adequate clearance for unobstructed pedestrian and vehicular view of all authorized traffic signals, traffic cameras, street lights, regulatory signs, street name signs, and other similar type of equipment or signs;

5. All maintenance shall be completed in accordance with the Atherton Municipal Code, Heritage Tree Protection Guidelines and other applicable permit requirements and standards.

In sum, the AMC states that property owners are responsible to maintain the public right-of-way adjacent to their property and details when and how heritage trees, such as the Subject Tree, are to be removed.

Even where a dead and dangerous tree requires removal, property owners are still responsible for obtaining a tree removal permit. (AMC § 8.10.040-A). In the case of dead and dangerous trees, the heritage tree ordinance allows for those permits to be issued by the Town Arborist. (AMC § 8.10.040-B).

Finally, Section 12.10.080 of the AMC gives the Town the discretion to act where a property owner fails to act within the time provided for in a notice to remove a dangerous condition and Section 12.10.090 of the AMC gives the Town the discretion to act where a hazard presents in imminent risk of harm.

History of Subject Tree

The Subject Tree was a coast live oak (*quercus agrifolia*) located in the right of way, adjacent to Appellant's property, on 175 Ravenswood Avenue. Over the past several years, the Town Arborist has inspected the tree on a number of occasions. In 2017, Town staff met with the Appellant to inform him that the tree was in poor condition and that it was his responsibility to remove it. (See, Attachment 2).

Over the years, the property owner failed to remove the tree. On June 6, 2023, the Town Arborist again visited 175 Ravenswood Avenue and documented the condition of the tree with a series of photographs. (See, Attachments 3 – 6).

The Appellant emailed the Town Arborist about several trees on November 1, 2023 and again contacted the Town to request the Town remove the Subject Tree at the Town's expense on November 16, 2023, noting to staff that "[the Subject Tree] is hollow at the base and could go any day." (See, Attachments 7-8). In the course of that correspondence, Staff again informed the Appellant that it was his responsibility to remove the Subject Tree.

Since the Town had been informed of the deteriorated condition of the Subject Tree, the Town's Code Enforcement Officer issued the Notice and Order to Abate on November 20, 2023, following an inspection of the Subject Tree that is documented in Attachments 9 – 11. On that same date, the Town Arborist also inspected the Subject Tree as documented in Attachments 12 & 13. On November 22, 2023, the Town Arborist again inspected the Subject Tree and prepared a Tree Risk Assessment that concluded the Subject Tree suffered from trunk decay and posed a risk to pedestrians and motorists. (Attachments 14 & 15).

Since the Appellant had failed to obtain a tree removal permit for the Subject Tree, as directed by the Notice and Order to Abate and because of the threat of winter storms, the Town hired West Coast Arborists (“WCA”) to remove the Subject Tree on December 26, 2023. (See, Attachment 16). On the date of the tree removal, the Code Enforcement Officer inspected the removal, as documented in Attachments 17 – 20.

On March 7, 2024, the Town invoiced the Appellant for the direct cost of \$5,750 of WCA removing the tree and administrative costs of \$1,150 associated with the removal of the Subject Tree. (See, Attachment 16).

Appeal

The Heritage Tree Ordinance provides for appeals under Section 8.10.080 of the AMC. The Appellant contacted Councilmember Widmer regarding his objection to being held responsible for the removal of the Subject Tree because it was located in the right-of-way. City Staff, in coordination with the City Attorney, determined that this matter should be brought forward as an appeal to the City Council.

ANALYSIS

In this case, there is no dispute about whether the Subject Tree was dead and dangerous. The Appellant had been informed of that fact in 2017, and the Appellant himself contacted the Town about the Subject Tree’s condition in November of 2023. The Town Arborist determined that the Subject Tree posed a health and safety risk. Everyone agreed the Subject Tree had to be removed and this fact is not at issue.

There are two distinct issues before the Council in considering this appeal.

First, the Council is requested to determine whether property owners are responsible for trees that are adjacent to their property. Second, the Council is requested to determine whether the Appellant had a duty to remove the Subject Tree in light of that responsibility, failed to do so, and therefore is now responsible to pay the Town \$6,900 in costs associated with the removal of the Subject Tree.

As the Background section above lays out, the answer to the first question is a clear and definitive yes. Chapter 12.10 of the AMC states that property owners are responsible for street trees that are adjacent to their property.

The next question is whether Mr. Foster had a duty to remove the Subject Tree and failed to do so. Again, based on the preceding authority in the Town's municipal code, he did. On November 20, 2023, Mr. Foster was issued a Notice and Order to Abate the Subject Tree. In light of the proximity to the Thanksgiving Day weekend, he was given until December 8, 2023 to seek a tree removal permit—more than the 10 days prescribed by Section 8.20.070-A-3 of the Town’s nuisance abatement code for the commencement of abatement. When he failed to seek a tree removal permit by December 8, 2023, Staff again evaluated the tree on December 22, 2023. Based on that assessment and the impending winter storms, Staff decided that the tree posed an imminent risk of harm and therefore hired WCA to remove the tree.

The Appellant is responsible for the Subject Tree and failed to act within the time prescribed in the Notice and Order to Abate. As such, the Town determined the tree had to be removed because of the risk it posed to public health and safety and exercised its powers under Sections 12.10.080 and 12.10.090 of the AMC including invoicing the Appellant for the cost of the tree removal. As such, the Appellant is responsible for the costs of the tree removal that should have been removed months ago by him but was not.

PUBLIC NOTICE

Public notification was achieved by providing notice pursuant to AMC Section 17.06.080. Public notification was also achieved by posting the agenda, with this agenda item listed at least 72 hours before the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,700 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders –including, but not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

1. Notice and Order to Abate (CE-23-433)
2. 2017 Email Chain
3. June 6, 2023 – Town Arborist Image of Subject Tree
4. June 6, 2023 – Town Arborist Image of Subject Tree
5. June 6, 2023 – Town Arborist Image of Subject Tree
6. June 6, 2023 – Town Arborist Image of Subject Tree
7. Early November 2023 Email Chain
8. November 2023 – March 2024 Email Chain
9. November 20, 2023 – Code Enforcement Image of Subject Tree
10. November 20, 2023 – Code Enforcement Image of Subject Tree
11. November 20, 2023 – Code Enforcement Image of Subject Tree
12. November 20, 2023 – Town Arborist Image of Subject Tree
13. November 20, 2023 – Town Arborist Image of Subject Tree
14. December 22, 2023 – Town Arborist Risk Assessment
15. December 22, 2023 – Town Arborist Image of Subject Tree
16. Tree Removal Invoices from WCA to Town and Town to Appellant
17. December 26, 2023 – Code Enforcement Image of Subject Tree
18. December 26, 2023 – Code Enforcement Image of Subject Tree
19. December 26, 2023 – Code Enforcement Image of Subject Tree
20. December 26, 2023 – Code Enforcement Image of Subject Tree