



SALEM PARKS AND RECREATION ADVISORY BOARD
HEARING
September 10, 2020
MINUTES

MEMBERS PRESENT

Dylan McDowell, Chair
Micki Varney, Vice Chair
Alan Alexander
Tony Caito
Woody Dukes
Dave Fridenmaker
Keith Norris
Paul Rice

MEMBERS ABSENT

Diana Dickey

STAFF PRESENT

Glenn Davis
Patricia Farrell
Jennifer Kellar
Milan Davis
Becky George
Toni Whitler
Rose Henlin
Lisa Anderson Ogilvie
Tom Cupani

1. ROLL CALL

Diana Dickey marked absent.

2. APPROVAL OF MINUTES

Vice Chair Varney asked that her name be spelled correctly in the minutes under item 2.
Member Varney moved to accept minutes as corrected; seconded by Member Alexander.
Member Norris abstained.
Roll call vote – All in favor.

3. PUBLIC COMMENT

Chair McDowell asked if there were any public comments not related to the public hearings.
With the new online forum, people were asked to sign up in advance. Ms. Whitler said no one had signed up.

4. ACTION ITEMS

a. Climate Action Task Force

Chair McDowell asked if anyone would like to volunteer to be the Alternate on this committee.
Member Norris volunteered after clarifying he would only attend if Chair McDowell was unavailable.

Paul Rice asked if Parks staff would be part of the task force. Patricia Farrell answered that yes, she is the project manager and other Parks staff would be involved as needed.

5. INFORMATION REPORTS

Chair McDowell asked if there were any questions for Staff on the updates that were provided to the committee in advance of the meeting: Urban Forestry, Parks Planning, Parks Operations and Recreation Services.

a. Chair McDowell asked Patricia Farrell about the virtual open houses that occurred as part of the Master Plan. Ms. Farrell said that there has been a disappointing response from the public. Pre-COVID-19 participation of the Battlecreek Park Master Plan was larger, but that was a new park with lots of neighborhood interest. The post-COVID-19 open house and survey for Bush's Pasture and Deepwood Cultural Landscape Management Plan received 351 responses. Advertising and social media posts were not helping to increase attendance, but staff acknowledged that there are currently many local and regional distractions going on.

b. Urban Forestry Update

Chair McDowell suggested that any questions about the plans for planting be submitted in writing to Patricia Farrell and added as future agenda items.

Members Norris and Rice were curious about the after-hours calls listed in the report. Jennifer Kellar answered that hot weather makes tree limbs brittle and they break.

Milan Davis added that the majority of the calls that were received from Dispatch through Police or Fire and usually because the large limbs or trees that dropped were in the public right-of-way and causing a hazard. Some calls were from residents that Milan goes out to assess the situation before dispatching a crew.

c. Parks Operations Update

Member Norris asked about the security provided by DPI Security in the Parks, if the company was providing a report of things that were encountered on the overnight shifts. Jennifer Kellar reported that after asking for more information from DPI, Parks had been receiving reports on a weekly basis.

6. PUBLIC HEARINGS

Modified procedures sent out earlier today clarified the order of proceedings. The Neighborhood Association for both hearings is the Appellant instead of what would normally be the Applicant. The modified order of the proceedings took this into account as well as made allowance for the Applicant to speak as well. Chair McDowell asked for a motion to adjust the proceedings of the agenda. Member Dukes made the motion; Member Rice seconded the motion. Roll call vote – motion passed (Member Alexander lost connection but there was a majority without). Chair McDowell explained the procedures of the hearings.

a. Appeal of Tree Removal Permit Approval: 725 Market Street NE, Grant Community School

City Staff Presentation: Glenn Davis, Chief Development Engineer for the City gave his report on the plans to put in a bus pull-out lane on Cottage Street to the west side of the school. This plan included removing five trees in the public right-of-way on the east side of Cottage Street and the issue as to whether these trees meet the criteria for removal. Salem Keizer School District is the applicant for the project.

Applicant: Joel Smallwood, Salem Keizer School District's Director of Maintenance and Construction Services and Mark Shipman, law offices of Saalfeld Griggs (250 Church St SE, Ste 200, Salem).

Mr. Shipman urged the Board to move to approve the tree removal application as noted in the staff report. This is tied to the 2019 approved bond for improvements to the Grant Community School. The submitted and approved plan (by Public Works staff, Planning and City Council) is the minimum to allow the District to make the changes they need to accommodate the needs of the students and the school. The trees will be replanted in the one-for-one tree replacement plan.

Appellant: Sam Skillern, co-chair of the Grant Neighborhood Association and has lived on Cottage Street for 22 years. Mr. Skillern said the Neighborhood Association has been trying to work with the District on alternative plans for the project that would not have as great an impact on traffic on Cottage Street and also save the established trees in the greenway.

Joel Smallwood affirmed that the District has committed to looking at alternatives with the Grant Neighborhood.

Mr. Smallwood reiterated that this hearing is to approve the tree removal permit as it stands for the plan in place. The current plan simply cannot be constructed without removing those trees. There was discussion with Mr. Cupani about the Applicant's agreement. The Applicant may withdraw the permit, they may even choose not to act on the current permit as stated. But there are hoops and hurdles to change the plan that has already been approved by Council.

Public comments: No comments registered for this issue.

Questions to staff from the Board:

Member Norris asked how the Planning process plays into the tree removal process? They cannot build the approved plan without the tree removal permit. Isn't the City's planning process already affirming the tree removal permit?

Glenn Davis responded. This is a new regulation: allowing SPRAB to review tree removal permits. Other permits don't have a secondary approval process that is required on a plan that was already Council-approved. This is a unique situation.

There is an amendment process that can be gone through to make changes needed. The City is committed to preserving trees and the site plan review has an expiration date.

Member Rice asked about a parallel process on Division Street from last year whether the criteria for that project met the criteria of saving trees. Within the permit process was there a requirement to replace one-for-one trees?

Glenn Davis answered. Chapter 86 requires that trees be planted to the maximum extent feasible. This is a normal criterion for building permits. "One-for-one" is just going to greater detail.

Member Dukes was glad to hear the conversation between the Neighborhood and the District. Chair McDowell asked Mark Shipman about the timeline for the new discussions taking place. The District has begun construction but until the appeal is hashed out, the construction is probably postponed until Spring of 2021.

Member Norris asked if this is a new process: that the tree removal permit while it was applied on approval of the land use plan, it was approved before the land use plan was approved. Timelines were overlapping.

Glenn Davis: the approval was conditioned upon the site plan being approved. The approval was granted, and removal was posted (30 days required). The site plan was approved by the Planning Administrator and by Council so there was a bit of an overlap in timelines.

Final rebuttal by the Appellant:

Sam Skillern stated the Neighborhood Association is optimistic about the idea they are working through with the District. We want to make sure that SPRAB is complementary to the process.

Final rebuttal by the Applicant:

Mark Shipman stated his appreciation for the comments of the Appellant and the City's legal representative, but it diverts us from the process of tonight's hearing. There is an approved plan

in place and a recommendation to staff for SPRAB to approve the District's request. We can still allow the District and the Neighborhood Association to continue their discussion on alternatives.

Questions to staff:

Member Rice made a statement about the disputed trees being newer than the trees on the other side of the street so the tree canopy over the street currently is not an issue. His opinion is to deny the appeal and let the permit stand as stated.

Member Norris added that reasonable alternatives have been explored as part of the land use planning process. He agrees with Paul to deny the appeal and affirm the Director's decision. Member Alexander mentioned the factual errors in the tree removal application. Denial of the permit would go against the betterment of the school, but he is concerned about the errors that occurred. After some clarification from Glenn Davis that they were not necessarily errors, just better language that could have been used, Member Alexander restated that deficiencies were actually pointed out in the staff report and corrected.

Chair McDowell commended the parties involved for their positivity in coming to a solution in this matter. On the record, *we encourage the continued collaboration between the District and Neighborhood Association as they continue to pursue other opportunities.*

Member Rice motioned to affirm the permit but encouraged the parties involved to continue their dialogue to come up with a mutually agreeable decision.

Member Alexander seconded the motion.

Roll Call – Motion carries 6-1

Recused

David Fridenmaker

In Favor

Chair McDowell

Alan Alexander

Woody Dukes

Paul Rice

Tony Caito

Member Norris

Opposed

Vice Chair Varney

b. Appeal of Tree Removal Permit Approval – 500 block of Salem Heights Road S.

Chair McDowell suggested for expedience that questions and clarifications would be allowed after each presentation and not have to wait until the end.

City Staff Presentation: Glenn Davis, Chief Development Engineer gave his presentation. The issue at hand is that three trees, already removed from the right-of-way, met the criteria of tree removal per Salem Revised Code (SRC) 86 Trees on City Owned Property and Salem

Administrative Rule 109-500-002 which establishes practices and rules applicable to trees on City-owned property.

Wren Heights subdivision is 34 lots proposed on eight acres. This area is substandard for bike lanes and sidewalks and there are quite a few trees in conflict with future street improvements. The subdivision is not up for debate since the plan was approved by the Planning Administrator. There were originally five City trees to be removed but that was amended to three since two of the trees are outside the City right-of-way.

In February a permit was issued to Developer to remove private property trees; the street trees in question were also removed at that time. The Developer applied for a tree removal permit in June at the City's direction. The Director granted the permit even though the trees had already been removed. SWAN appealed the decision and tonight is the appeal hearing. Once SPRAB enters its decision, the Director will assess civil penalties. SPRAB does not have a regulatory role in assessing civil penalties.

The Director's original decision granted the permit based on the criteria that there were no reasonable alternatives to tree removal. Staff recommends that SPRAB affirm the permit for the tree removal.

Questions to staff:

Member Dukes asked what happens if the permit is denied? Land use condition would not have been met and there would be an amendment process to go through. The violation will still go forward whether the permit is affirmed or not.

Member Norris asked if the code violation is separate from the approval process?

Glenn Davis – the amount of the penalty is waiting for the decision from this meeting. If the trees were permitted to be removed, the violation would be a different matter than if the trees were not permitted to be taken out at all.

Member Dukes was concerned that they knew they needed a permit and they removed the trees anyway.

Member Alexander and Glenn Davis had a discussion about whether the penalty was already decided, and the Developer should have known better.

Mr. Davis asserted that there had been some discussion, but the final decision was waiting for SPRAB's decision. "You don't skip the process by violating it".

Member Norris wanted some background information about this issue. 'After the fact street tree removal permit' is not a formal designation, more of a description. One of the conditions talks about tree preservation on private property and the city trees that would need to be removed. Removal of the City trees was given "tentative" approval to remove the trees as part of the planning process. He wanted to know a little more.

Glenn Davis answered that staff recognized that the three trees had to come out for the street to be built but staff didn't have authority to authorize this process before the approval was

granted by the Director. The street construction permit is not approved because the street tree removal permit is not approved.

Applicant testimony:

Mark Ferris is the Applicant's representative; Keith Whisenhunt testified for Mr. Ferris who was not available for the meeting. He is the surveyor for the project. Tom Kay is the applicant and developer.

Mr. Whisenhunt wanted to make sure that some things were clarified. First, a previous survey was used so there were some discrepancies in where and how many trees were involved. Secondly, the Developer worked with City staff to try and save as many trees as possible. They were able to preserve 19 of the 22 trees that were slated to come out in the City right of way. During the tree removal, a City inspector was present at the time of their removal and said that everything "looked fine". Everyone, including the City inspector, thought that it was reasonable that the trees needed to be removed. Mr. Davis noted later that it is not the role of the City inspector to determine tree removals.

Comments:

Member Varney commented that there was no posted removal notice on the trees. It seems like they disregarded proper procedures.

Member Caito commended that even though there was a City employee there at the time of the removal, the burden of proof is on the Applicant to prove that they acted appropriately. Keith Whisenhunt says that the Applicant understands there was no permit. The proximity of the trees to right-of-way made it hard to determine what needed to be removed. Their intent was to take out the correct trees.

Member Alexander stated that it seems like there should have been a project manager or construction manager that was supervising this action.

Member Norris asked about the reasonable alternative to removing the trees. How was that demonstrated?

Keith Whisenhunt said there was discussion between the City and the Applicant about street widths and sidewalks in the application process to try and save as many trees as possible. The application process involved discussion of the trees as part of the construction standards.

Appellant testimony:

Ted Burney, Land use chair of South West Association of Neighbors (SWAN). He sent in his testimony with photos. SWAN unanimously voted to appeal the decision of the permit approval. He disagreed that there was 'no reasonable alternative' and he claims that there were alternatives.

The standards being applied to this project are just starting points, not mandates. Salem Heights does function as a collector street, but it has never been developed and it is a local street. There is room for adjustments on the design. Center line adjustment could have been utilized to make

it a 'meandering' street and avoid the trees in question. A 'road diet' could have been applied to make the street narrower to avoid the trees. Curb radius could have been lessened or sidewalk and bike lanes could have been redirected or reduced.

Questions to Appellant:

Member Fridenmaker asked if these street alternatives were discussed during the subdivision process?

Appellant stated that the paperwork they were given only said "no reasonable alternatives were given". He would have liked to have seen those alternatives.

Member Dukes asked if a certified arborist or consultant was asked to approve these proposed alternatives.

Appellant said "no".

Member Dukes asserted that we shouldn't save trees just to save them and then have to take them out later. He used one of the photographic examples given with the sidewalk around the base of the tree, noting that now the tree is almost dead.

Member Alexander congratulated the Neighborhood Association on their well-researched and well-presented presentation. It is obvious they are passionate about the subject.

Public Comments:

Ron Eachus – He has lived on Salem Heights Road since 1989. He sent in comments and exhibits. We are in a closed loop: staff maintains that there are no alternatives because the design has been approved. There are reasonable alternatives that could protect the trees and allow traffic flow. The improvements on one side of Doughton St S don't have to mirror the improvements on the other side. Staff has applied collector street standards to a half-street improvement. The City will not be acquiring any additional right-of-way even though the street does not currently meet collector street standards. He is questioning the whole process.

Bill Dixon –608 Salem Heights Avenue S. Would like to talk about how the Salem Heights community can help the City remedy this difficult situation. There is currently a Salem Heights Advisory group which is led by a senior planner from City staff and consists of 10 people from the neighborhood. They are interested in enhancing safety, improving usability, reflecting the character of the neighborhood and following the City's design standards. Tree canopy was a major factor in the livability of the neighborhood so the Advisory group is working with staff on the unique situation of the street to protect the remaining 17 trees in the construction of the subdivision as well as replacing the removed trees as close to their original location as possible.

Jeanine Stice – Chair of SWAN, lived on Sunridge Drive for 19 years. SWAN had a conversation with the Developer about tree preservation and felt confident that future conversations would include alternatives that would preserve trees. She believes that this was a missed opportunity to do the right thing for the size of street considered.

Board questions for staff:

Chair McDowell asked Mr. Davis about precedent. Recognizing that this is a unique situation and wanting to make sure that Developers aren't disregarding the regulations.

Mr. Davis said that to his knowledge that this is the first time this has happened with a tree removal permit. It happens sometimes with grading permits or other construction permits but not with tree removal permits.

He also wanted to clarify what was said about a City inspector on site. City inspectors visit between 12 to 20 sites per day to make sure that erosion control concerns and prevention are in place. It is not their role to think of the nuances of the permits required for the construction they are inspecting. Mr. Wisenhunt knew that there was no permit in place, and he did not follow process.

Member Fridenmaker asked about grading permits and whether they were issued at the same time as the tree removal permit.

Glenn said that the applicant was fully aware when they picked up the grading permit that they are required to get a tree removal permit for anything other than private property.

Vice-chair Varney made the comment to ask how to approve a permit for something that doesn't exist. Final subdivision approval was granted and told that they were required a tree removal permit.

Member Norris asked Glenn to display his slide that describes the issue at hand. How can the three trees meet the criteria for removal when they no longer exist?

Glenn was asked for "reasonable alternatives". Council approved the design as part of the subdivision approval process. To build the subdivision they would need to excavate 24 to 30 inches right next to the tree which would cause irreparable damage to the tree.

Mr. Cupani wanted to clarify the question before SPRAB: was this a tree that would have had a permit properly issued when it was taken down? Alternatives to the street design and ways to avoid cutting down trees are all part of the land use process and is outside of SPRAB's purview. There is a chain of command that SPRAB cannot step into, the design was approved, and it is that design that SPRAB must consider.

The sequence of events is something we want to avoid in future considerations.

Member Dukes commented about a concern of setting a precedent. If this happens again, what is the deterrent for another Contractor to do the same thing?

Mr. Cupani talked about the disincentive, both monetary and procedural, that would deter this from happening again. As part of the modifications to the current regulations, there would need to be an amendment to the tree conservation plan on new applications.

Vice-chair Varney upon reading the appeal procedures in SPRAB bylaws: are we making the decision on the appeal or the permit?

Mr. Cupani maintained that they are one and the same. What the committee is being asked to do is either affirm the appeal and deny the permit or deny the appeal and affirm the permit.

There has been a lot of due process in this case and ample opportunities for the parties involved

the weigh-in on the case from the Planning commission to the City Council and the appeal that was settled by LUBA.

Member Norris stated that the City's due process of the tree removal permit was blatantly ignored.

Mr. Cupani said that what was going to happen to the trees and the alignment of the street had been established by the due process of the approval and would they have received a permit based on that land use plan.

Member Norris disagreed. We are requiring the appropriate application of permit approval, which has also been put in place by the duly elected members of the City.

Mr. Cupani stated that if there were no reasonable alternatives based on the land use decision, would they have gotten a permit to remove those trees? If that is not the case, they will be sanctioned appropriately in that circumstance.

Member Caito asked if the permit had been issued at the right time, do you believe that the decision from the Director would have been different?

Glenn stated that they believe as staff that the street could not have been constructed without removal of the trees.

Member Rice talked about being made uncomfortable by the process of being asked to approve a permit where the decisions have already been made. Because we are being asked to review something that has already happened, we have no real say-so in the decision.

Member Alexander asked about the legality of the after-the-fact permit.

Mr. Cupani stated that if you were entitled to do something and needed a permit to do it, starting the process and then going back and getting the permit after the fact is certainly not the best practice. This hearing points out that we need to fix the system and to let the Developers know that this is the not the way to do things.

Mr. Davis agreed that if we had not gone through this process, civil penalties would have been assessed and SPRAB would never have seen anything about this issue.

Final rebuttal

Appellant:

SWAN's issue is the due process that was ignored. Trees were cut down before any notice was posted. There was no way to appeal before the trees were removed. The Developer ignored due process because the plans were tentative even after staff reminded them. They maintain that reasonable alternatives were never considered or examined.

Applicant:

This was not a surveying error; there is a different resolution of the boundaries that was submitted by the City Surveyor and approved by the County Surveyor. He was sorry about his comments regarding the City inspector. The proposed alternatives were rejected by the City

Traffic Engineer because he maintained that there must be a bike lane. Everyone loses sight of the work that went into the approved design and all the entities involved in the process and there was significant analysis to try and save trees.

Questions for staff:

Public comments are closed.

Deliberations:

Member Alexander said that an issue like this erodes the public trust in the City and doesn't cast the Developer in a great light.

Member Norris asked for Board members perspective on "what is the question?" If the permit had been applied for before the trees were cut down, the permit would have been approved. Is it the validity of the permit or on the validity of the Director's issuing of the permit after the trees are gone?

Chair McDowell wanted to remind the Board that there will be civil penalties regardless of the decision today because there have been some processes that were followed. It's not just someone that went out and cut down a City tree.

Discussion about the wording of the motion ensued.

Chair McDowell stated that we could make two separate motions: one to affirm the permit and one to express the dissatisfaction from SPRAB.

After much discussion, Member Alexander made a motion to affirm the decision of the Director to issue the permit. The motion was seconded by Member Dukes.

More discussion ensued.

Vice-chair Varney asked if the motion could be amended to deny the appeal and affirm the Director's decision on the tree removal permit in the 500 block of Salem Heights Avenue S.

Mr. Cupani clarified the parliamentary rules for amending a motion that has been seconded. The first vote would be to amend the original motion.

Roll call vote – amendment passed unanimously.

New Motion

Motion to deny the appeal and affirm the Director's decision on the tree removal permit in the 500 block of Salem Heights Avenue S.

Roll call vote - The motion carries 5 - 3.

In Favor

Chair McDowell

Alan Alexander

Woody Dukes

David Fridenmaker

Paul Rice

Opposed

Tony Caito

Member Norris

Vice Chair Varney

Member Alexander suggested that the advisory opinion be carried to next month due to the lateness of the hour.

Mr. Cupani said that since the appeal has been decided, the advisory opinion be carried to the next month to express the Board's displeasure about the process.

Chair McDowell asked for a volunteer to draft up a document to present at next month's meeting so you don't have a quorum outside the meeting. Member Alexander will do the first draft.

- 7. New Business**
- 8. Next meeting – October 8, 2020**
- 9. Adjournment at 9:27 p.m.**