

1 **BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE**
2 **CITY OF LAKE OSWEGO**

Approved

3
4 A REQUEST FOR A TYPE II TREE REMOVAL) AP 14-04 [TR 499-14-00235]-1839
5 PERMIT TO REMOVE 40 TREES) DARRYL FLECK
6) FINDINGS, CONCLUSIONS & ORDER
7

8 **NATURE OF APPLICATION**

9
10 A request for a hearing on a Type II tree removal application to remove 40 trees in order to
11 construct a new single-family dwelling and driveway on the site.

12
13 The site is located at 17918 Kelok Road (Tax Lot 205 of Tax Map 2 1E 17CA).

14
15 **HEARINGS**

16
17 The Commission held a public hearing and considered this application at its meeting of March 31,
18 2014.

19
20 The following exhibits were submitted at the hearing or after the publication of the March 25 Staff
21 Report:

- 22
23 Exhibit F-7 Letter with attachments from Darryl and Stacie Fleck, dated March 26, 2014
24 Exhibit F-8 Applicant's PowerPoint presentation
25 Exhibit F-9 Screen shots of Statewide Landslide Information Maps from the Oregon
26 Department of Geology and Mineral Industries
27 Exhibit G-202 Letter from Dana Shaffer, received March 31, 2014
28

29 **CRITERIA AND STANDARDS**

30
31 A. City of Lake Oswego Tree Code [LOC Chapter 55]:

- 32
33 LOC 55.02.080 Criteria for Issuance of Type II Tree Cutting Permits
34 LOC 55.02.084 Mitigation Required
35 LOC 55.02.085 Request for Public Hearing on a Type II Tree Cutting Permit
36 LOC 55.02.094 Conditions of Approval for Tree Cutting Permits
37

38 **CONCLUSION**

39
40 The Commission concludes that AP 14-04 [TR 499-14-00235] can be made to comply with all
41 applicable criteria by the application of certain conditions.
42

43 **FINDINGS AND REASONS**

44
45 The Commission incorporates the March 25, 2014, Staff Report (with all exhibits attached
46 thereto) as support for its decision, supplemented by the further findings and conclusion set forth
47 herein. In the event of any inconsistency between the supplementary matter herein and the staff
48 reports or memos, the matter herein controls. To the extent they are consistent with the approval
49 granted herein, the Commission adopts by reference its oral deliberations on this matter.
50

51 Following are the supplementary findings and conclusions of this Commission:
52

- 1 1. The Commission received testimony from the appellants and two neighbors to the east that
2 they are concerned that the proposed tree removal will expose the trees on their properties
3 to damaging winds and that the new dwelling should be shifted west to allow some trees
4 (particularly Trees #61-64) to be retained in the rear yard.
5

6 The Commission considered the appellants' arborists reports of:
7

- 8 • Mary Giersch Consulting Arborist (12/13/13) (Exhibit G200): The arborist states that
9 the requested tree removal will have a significant negative impact upon the
10 appellants' trees due to winds from W/SW. The Commission finds there is no
11 analysis of whether the condition of the appellants' trees would make them
12 susceptible to windthrow after the applicant's trees are removed. In addition, the
13 arborist does not consider the mitigating effects on winds from the W/SW that would
14 be provided by the future house and the other remaining intact stands of trees to the
15 south.
16
- 17 • Pacific Resources Group (12/16/13) (Exhibit G200): The arborist states that "at
18 present, the trees on your [appellants'] property are somewhat protected by trees
19 growing upwind" and that the removal of the requested trees will result in the
20 appellant's trees being "totally exposed" when the home site is cleared. The
21 Commission finds, again, there is no analysis of whether the condition of the
22 appellants' trees would make them susceptible to windthrow after the applicant's
23 trees are removed and there is no consideration given to the mitigating effects on
24 winds from the W/SW that would be provided by the future house and the other
25 remaining intact stands of trees to the south.
26

27 In addition to the findings on pages 3-5 of the March 25 Staff Report, the Commission finds
28 that the City's consulting arborist performed a review of the applicant's and appellants' trees,
29 taking into consideration the findings of the appellants' arborists reports, the structure and
30 live crown to height ratios of the trees, and the wind screening effects of the existing stand of
31 trees to remain to the south, as well as wind screening benefits from the future house
32 (Exhibit F3). The Commission concludes that the City's arborist report provides a more
33 comprehensive review of the conditions and factors effecting wind protection than the
34 appellants' arborist reports and finds that the proposed tree removal will not have a
35 significant negative impact on existing windbreaks.
36

- 37 2. The Commission received testimony from the appellants that the trees proposed for removal
38 are older, deep-rooted trees and the soil stability they provide will be lost once they are
39 removed. The appellants are concerned that the removal will leave the hillside behind their
40 home susceptible to landslides.
41

42 Commissioner Poulson, an engineer, observed from the evidence in the record that there is
43 no indication of past soil movement on the slope at the rear of the site: many large boulders
44 are present on the site and on the slope in the rear yard, and the trees on the hillside are not
45 bowed, which would be indicative of soil creep and sliding. In addition to the findings on
46 pages 3-5 of the March 25 Staff Report, and noting the absence of such concerns by the
47 appellants' arborists in their respective reports and that the site is not identified as being in a
48 slide area by City Maps, the Commission finds that the proposed tree removal will not have a
49 significant negative impact on soil stability.
50

- 51 3. The Commission received testimony that the trees on the appellants' property have roots
52 that extend into the applicant's property and any grading above these roots would negatively
53 impact their trees and the safety of their home.

1 The Commission finds that the March 25 Staff Report contains a condition of approval that
2 prohibits filling, grading, trenching or the construction of retaining walls within the driplines of
3 the trees on the appellants' property in order to protect the critical root zones of these trees.
4

- 5 4. The appellants raised several issues in a letter submitted at the public hearing (Exhibit G-
6 202). Below is a list of the issues and a response to each.
7

- 8 a. The appellants never received notice of the first tree removal application filed by the
9 applicant (which was later withdrawn) and did not see the sign posted on the property
10 because appellants' property abuts the rear yard of the site and takes access from a
11 different street. A notice should be required to be sent to all affected neighbors.
12

13 Response: Notice of the subject tree removal application (as well as the first tree removal
14 application that was later withdrawn) was mailed to the Blue Heron Neighborhood
15 Association and a sign was posted on the site in accordance with the notice requirements
16 in LOC 55.02.082. The Commission finds that there is no requirement to mail a notice to
17 surrounding property owners.
18

- 19 b. The tree removal application was assigned to a staff person with little or no expertise in
20 the area of trees, and was later reassigned to a contract arborist, presumably to add
21 credibility to the decision. Appellants assumed that a committee of Planning Division
22 officials would be required to approve an application of this magnitude.
23

24 Response: Per LOC 50.02.082, a decision on a Type II tree removal application is made
25 by staff, not a committee of Planning Division officials. The subject tree removal
26 application was assigned to a staff planner, and as is customary with complex tree
27 removal applications, the City's contract arborist consulted on the application and made
28 recommendations to staff. The Commission finds that the review procedure for the tree
29 removal application has been followed. In any event, the Commission is obligated to
30 approve a tree removal permit if the record presented at the public hearing demonstrates
31 that all applicable criteria has been met or can be met with conditions of approval.
32

- 33 c. The answers provided by the applicant to the Type II tree removal criteria give no
34 consideration to the impact of the proposed tree removal on the neighbors along Cardinal
35 Drive.
36

37 Response: Per LOC 55.02.080, the tree removal cannot have a significant negative
38 impact on the character, aesthetics, or property values of the neighborhood. The
39 applicant states that because the trees near Kelok Road will be maintained, that it will
40 preserve the wooded character of the streetscape along that corridor. In addition, the
41 applicant states that large trees will remain between the applicant's property and Cardinal
42 Drive, which will maintain the wooded character as viewed from that street.
43

44 In addition to the findings on pages 5-6 of the March 25 Staff Report, the Commission
45 finds that because the site is covered by trees, the removal of a significant amount of
46 trees is unavoidable and that the tree removal proposed by the applicant does not have a
47 significant negative impact on the *neighborhood* as a whole because trees will be
48 maintained along Kelok Road and existing stands of trees exist to the north, south and
49 east of the site.
50

- 51 d. The applicant submitted a tree removal application prior to the subject application, which
52 the appellants appealed. The applicant withdrew the application one week before the
53 appeal hearing date. Appellants believe the applicant withdrew the application in order to

1 use the Notice of Intent to Appeal they filed for the previous tree removal application to
2 shore up holes and weaknesses for the resubmitted tree removal application.

3
4 Response: This is not relevant to the applicable criteria. Staff notes that anyone can
5 submit new information or exhibits at an appeal hearing before the Commission, so the
6 applicant did not have to resubmit a new application in order to address the issues raised
7 by the appellants in the Notice of Intent to Appeal for the first tree removal application. As
8 stated above, the Commission is obligated to approve a tree removal permit if the record
9 presented at the public hearing demonstrates that all applicable criteria has been met or
10 can be met with conditions of approval.

- 11
12 e. Appellants believe it was a foregone conclusion that the resubmitted tree removal
13 application filed by the applicant would be approved because staff advised them that the
14 application might still be approved even with the comments that were submitted by the
15 appellants.

16
17 Response: This is not relevant to the applicable criteria. Staff notes that each application
18 is reviewed along with all comments that are received against the applicable criteria. If an
19 application meets the criteria, it is approved. If the application does not meet one or more
20 criteria or cannot be conditioned to comply with the criteria, then the application is
21 denied.

- 22
23 f. The appellants believe the applicant received special treatment for obtaining a hearing
24 date before the Commission and that the appellants' schedule was not considered.

25
26 Response: This is not relevant to the applicable criteria. (Staff advises the Commission
27 that the applicant had to wait an unusually long time to secure a hearing date for the
28 appeal because the next two available regular meeting dates of the Commission were
29 full. The Commission agreed to hold a special meeting to hear the tree appeal on March
30 19. After it was learned that the appellants had a conflict with this date, it was
31 rescheduled to March 31 when both the applicant and appellants were available.)

- 32
33 g. No compromises have been offered by the applicant or the City to address the appellants
34 concerns. The City's tree removal process favors the builder.

35
36 Response: The Commission reviewed the application and considered the public
37 comments submitted. The Commission is obligated to approve a tree removal permit if it
38 finds that that the proposed tree removal meets the applicable criteria with the imposition
39 of conditions of approval. As stated above and by incorporation of the staff report, the
40 Commission finds that the applicant has met its burden of proof, with the imposition of
41 conditions imposed on the tree removal request, including shifting all construction and
42 grading activities outside the driplines of the fir trees on the appellants' property to
43 address concerns relating to the protection of adjacent trees.

44
45 [Note: City staff advises that it recommended to both parties on several occasions that
46 they meet with one another in order to come to a mutually agreeable plan and offered
47 information about free arbitration services provided by the Clackamas County. While staff
48 encourages applicants to work with their neighbors to address concerns, if an application
49 meets all applicable criteria, the Commission cannot require an applicant to make
50 modifications above and beyond what is required by the Code.]

1 **ORDER**

2
3 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego**
4 **that:**

- 5
6 1. AP 14-04 [TR 499-14-00235] is approved, subject to compliance with the conditions of
7 approval set forth in Subsection 2 of this Order.
8
9 2. The conditions for AP 14-04 [TR 499-14-00235] are as follows:

10
11 **A. Prior to Issuance of the Tree Removal Permit and Building Permit to Construct**
12 **the New Dwelling, the Applicant/Owner Shall:**

- 13
14 1. Submit final site plans showing the following information to the satisfaction of
15 staff:
16
17 a. The location of the fir trees on the abutting lot to the east and their
18 driplines.
19
20 b. No underground utilities or irrigation systems shall be installed on the site
21 beneath the driplines of the trees located on the abutting property to the
22 east.
23
24 c. The proposed retaining wall shall be shifted to the west so that it is located
25 entirely outside of the driplines of the firs located on the abutting property
26 to the east. No construction activities, including excavation, grading,
27 stockpiling, or maneuvering of equipment shall occur within the driplines of
28 these trees.
29
30 d. No mitigation trees shall be planted beneath the driplines of the trees
31 located on the abutting lot to the east.
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1 DATED this 21st day of April, 2014.
2
3

4 Gregg Creighton /s/
5 Gregg Creighton, Vice-Chair
6 Development Review Commission
7

8
9 Janice Reynolds /s/
10 Janice Reynolds
11 Administrative Support III
12

13 **ATTEST:**
14

15 **ORAL DECISION – March 31, 2014**

16 AYES: Creighton, Ahrend, Johnson, Poulson and Melendez
17 NOES: None
18 ABSTAIN: None
19 ABSENT: Needham and Rossi
20

21 **WRITTEN FINDINGS – April 21, 2014**

22 AYES: Creighton, Ahrend, Johnson, Poulson and Melendez
23 NOES: None
24 ABSTAIN: Needham
25 ABSENT: Rossi
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53