

December 20, 2019

Susan Johnson
Department of Conservation and Development
Community Development Division
30 Muir road
Martinez, CA 94553
Attn: Susan Johnson
County File #TP19-0036

Patricia McGregor
William Schultz
2776 West Newell Ave
Walnut Creek, CA, 94595

Ms. Johnson,

This letter serves as notice that we are appealing to the Contra Costa County Board of Supervisors regarding the December 11, 2019 Planning Commission's approval of a tree permit to remove 22 code-protected trees located at the proposed site of 0 West Newell Avenue, Walnut Creek.

We especially want the two large oak trees identified as #36 and #37, approximately 70 feet in height be saved as they stand next to our large oak tree #38. As stated in the Tree Protection and Preservation Ordinance of Contra Costa County: "The county finds it necessary to preserve trees on private property in the interest of the public health, safety and welfare and to preserve scenic beauty. Trees provide soil stability, improve drainage conditions, provide habitat for wildlife and provide aesthetic beauty and screening for privacy. Trees are a vital part of a visually pleasing, healthy environment for the unincorporated area of this county." Construction around our large oak tree, #38, would negatively impact our tree's health, potentially causing it to fall, due to the trenching around our tree #38. The survivability of our tree #38 is unpredictable and the construction site runs too close to the trunk of our tree.

Construction is proposed on a substandard lot size in relation to the size of the house. As Duane Steele, Chairman on the Planning Commission stated at the hearing on December 11th, "my observation (this) is a very difficult triangular lot" to develop. The two large oak trees, #36 and #37, which are elevated above our home, provide soil stabilization. Even though the lot is zoned R-20, the buildable portion of the lot is limited, considering most of the property is designated as Open Space. We are asking that the County require the architectural plans to include the location of the open space on the site plan. The number of trees being removed is unwarranted and unnecessary. The house can be made smaller or relocated away from removing trees #36 and #37. The removal of the large oak trees will cause significant visual impacts with the construction of the large, two-story house, which is significantly larger than any other home built along the street on West Newell Ave.

Additionally, in providing soil stabilization, the proposed retaining wall section of the staff report, (on page 6 in the Findings section of the staff report) is unclear. It is recorded at the meeting that the owners will deal with the retaining walls, yet nothing is specified. On the architectural plans, it shows a 6-foot retaining wall shall be placed on the hillside, and a 2-foot wall is planned to separate the new construction from our house, where they are removing the two large oak trees. A 2-foot wall does not provide enough support for stabilizing the ground as there is a downward slope toward our home.

A geotechnical engineering report is warranted based on the grading of the hill and removal of so many trees. The plans need to include a geotechnical engineering set of drainage plans, as a reputable engineer from Ned Clyde Construction noted when he visited the site. At the hearing on Dec. 11th, the owners did not provide any evidence of a soil engineering report in their plans, as Richard Clark, Planning Commissioner, noted. The owners said that they are building on the "flat" section, which is not the case,

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APPLICATION & PERMIT CENTER

as they are elevated above our home, on a gradient, and their construction site is dealing with the slope from the hillside.

The removal of the trees and construction of a house will increase storm water runoff. The applicant, David Montalbo, stated at the hearing on Dec 11th, that the storm water flow will be directed down West Newell Avenue. The 78-year-old un-improved gutter and drainage system, which needs repair, will be overwhelmed. We are asking for a drainage permit requirement prior to a building permit being issued.

The undergrounding of the utilities required by PG&E for wildfire prevention cannot be completed due to the steepness and surface slippage of the hill, as stated by a PG & E representative when visiting the site. If the owners feel that they can underground the utilities on the hillside, the California Environmental Quality Act should not be exempt, as there will be a large number of trees removed and intrusion into the hillside making it more unstable.

Based on the testimony from William Schultz, and the documentation provided by the California Oaks Foundation, the removal of so many trees would negatively impact the value of our home and surrounding homes. We've lived in our home for over 18 years. It has been amazing living on a block that feels like one long cul-de-sac. since the road ends at our home. We've enjoyed celebrating our annual West Newell Ave 4th of July Pancake Breakfasts and hosting Oktoberfest parties. We love our neighbors and have a long history with most of them. We are like one big family that cares about our beautiful area.

The findings by the Planning Commission were not supported by evidence. The Planning Commission incorrectly decided that the tree removal permit could be issued because the County Staff could later place conditions on the tree removal permit at the time of the building permit. This was incorrect because Staff cannot place such conditions on a building permit, according to a land use attorney that was present at the hearing. The Planning Commission should have placed limits or conditions on the use permit. As stated, the Planning Commission incorrectly determined that such limits or conditions be imposed at the building permit stage.

The Planning Commission further ignored evidence that it is not necessary to have the new construction be placed over the two large oak trees. As stated by many of my neighbors at the hearing, the house simply needs to be constructed in a different location, or the house needs to be smaller.

The facts that were placed before the Planning Commission from the testimonies by the owners who were opposed to the tree removal were not considered. We had numerous neighbors testify their concerns in opposition to the tree removal permit. We are the citizens who live in this neighborhood. We care about our neighborhood. Duane Steele, as the very end of the hearing announced his retirement and referenced us saying he "hopes that the owners that came, know we represent them."

We did not get fair representation at the December 11, 2019 hearing. The owners, Tambri Heyden and David Montalbo, lied when they said they made multiple attempts to contact us about the tree removal permit. We first heard about it when we received the notice from the County in the mail. The owners could have left a note on our front door with their name and contact information, before it escalated to this level. At the hearing Tambri Heyden was able to turn in documentation for the commissioners, but when William Schultz attempted to turn in documentation, Duane, Chairman, would not accept it, saying it had to be turned in prior to the hearing. Much more time was allotted Tambri and David to speak, as I was not able to state all of my concerns due to the strict time limit. We appreciate the Planning Commissioners who took a vested interest to be open minded and who came out to the site.

In this age of climate change, removing 22 code-protected trees for the construction of one, oversized, flat-roofed house, with no front yard, and no back yard, does not fit in with our neighborhood. As Duane Steele stated that he has never seen such poorly designed architectural plans. The evidence is clear that the number of trees being removed will greatly impact the drainage, the stabilization of the hill, and the surrounding beauty that the trees provide to the area. There are too many unanswered questions. Please let us work together and have the proposed construction amended for a better solution.

Attached is a two-page document from Joe McNeil, a consulting arborist, regarding the significant impact and arising unanswered questions about our tree #38.

Respectfully,

Patricia McGregor and William Schultz

McNEIL ARBORICULTURE CONSULTANTS LLC

December 20, 2019

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asca AMERICAN SOCIETY of
CONSULTING ARBORISTS

Patricia McGregor
2776 West Newell Ave.
Walnut Creek, CA 94596-1514

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APPLICATION & PERMIT CENTER

SUBJECT: Review of tree impact and protection resulting from proposed construction at 0 West Newell Ave, adjacent to your home, Contra Costa County file # TP19-0036, the Montalbo/Heyden residence. I have reviewed a plan set revision dated October 10, 2019, including sheets SP-1, A-1, A-2, A-3, A-4, A-5, A-6, C.4.1, C.1.1, C.1.2, C.1.3, C.1.4, C.2.1, C.2.2, C.2.3, C.2.4, C.2.5, C.3.1, C.3.2, C.4.1, and a topographic survey by Apex civil engineers dated October 3, 2019. I have also reviewed two documents from Traverso Tree service to Tambri Heyden. First, an arborist report addendum dated October 10, 2019 and an October 25, 2019 revision of a July 3, 2019 arborist report. My comments and questions raised here are limited to information provided by these documents regarding potential impacts to a tree of shared ownership, primarily on your property, identified as a 33 inch trunk diameter valley oak, tree #38.

A home, with associated construction disturbance is proposed on the lot immediately southwest of yours. Valley oak tree #38 is primarily on your property, adjacent to the proposed construction zone. I have several comments and questions regarding the impact of proposed construction on your oak tree. These questions are pertinent to preservation of the oak tree and are unanswered by any of the documents referenced above.

1. A 25 foot wide utility easement abuts the tree along the property line. A gas line is identified on the drawings as extending to the house through this easement. Water appears to be provided to the house well away from tree #38. The plans I reviewed were too small to distinguish other utilities, such as electrical, cable/fiber optic, or sanitary sewer. Storm drains appear to be located well away from tree #38, although drainage is not shown along a wall extending NNW along the property line from the tree. Such drainage could affect the tree.

The upper three feet of trenching for any utilities within 20 feet of tree #38 must be conducted by air spade. It is permissible to cut small roots to gain access to soil that must be removed from around larger roots. Deeper than three feet the trench may be excavated by hand. Alternatively, allow no utility trenching within 20 feet of the tree.

2. A proposed retaining wall extends northwest from the tree along the property line. Elevations of the wall and finish grades within the area critical to tree roots are not called out. The existing grade at the tree is shown as 216.7'. The top and bottom of wall there are not indicated. Seventeen feet NNW of the tree along the wall, existing grade is indicated as 217.78', a foot higher. The bottom of the wall there is shown as 215.70', a two foot deep cut that will remove most oak roots at that point. The top of wall there is 218.28' a 2 1/2 foot wall at that point. Further to the NNW the top of the wall is at 217.7', indicating the top of wall is not level. This further emphasizes the

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ISA Board Certified Master Arborist # WE0102B • Calif. Contractors Lic. # 482248 (Tree Care C-61 D-49, Landscaping C-27)

ASCA Registered Consulting Arborist #299 • ISA Certified Arborist WE11635A • ISA Qualified Tree Risk Assessors

joe@oakperson.com • todd@oakperson.com • <http://www.oakperson.com/>

remaining question of the top and bottom of wall at the tree. These elevations must be called out.

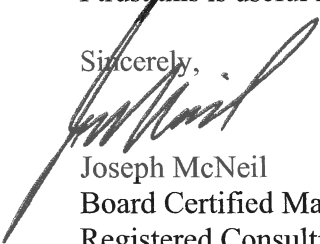
On sheet C1.1 a line extends from the end of the wall by the tree for approximately 30 feet to the NNW. This is not a topo line, as it does not tie into existing grades anywhere. Clearly there will be grade changes here that will affect the tree, but they are not shown on the grading plan, where one would expect them. The report from Traverso references grading up to within a foot of tree #38, but is non-specific about what that grading is.

No grade changes should occur within two feet of the base of the tree, and to 20 feet from the side of the tree no grade alteration should exceed four inches, either cut or fill. This needs to be shown on the grading plan. As the Traverso report indicates, any grade changes within this area must be done by hand.

3. If there will be drainage along this wall it must be shown, and impacts assessed.
4. The wall cannot abut against the trunk of the tree. The tree will continue to grow and will likely displace the wall. There must be at least a foot of distance between the side of the tree and the termination of the wall. Wall displacement is especially a risk if roots are under a footing. See the next item.
5. A spread or "L" footing cannot be within six feet of the side of the tree. It will likely destroy roots. If large roots are under the footing they will likely heave the wall.
6. The footing near the tree must be piers, drilled between supporting roots, as determined by the project arborist. It is almost certain, in my experience that no pier can be drilled within two feet of the side of the tree, and three feet of distance may be required.
7. The wall within at least six feet of the tree must be supported by piers, and will be a suspended grade beam, with the base at existing grade, or no more than four inches below existing grade. As the wall extends past the final pier it must cantilever, suspended.
8. In my experience with walls that terminate into native oak trees it is best to air excavate from the tree out to ten feet from the side of the tree along the proposed wall. The trench should extend the width of any anticipated piers or other footings, to a depth of three feet. This will confirm where footings for the wall can be installed, with minimal risk to the tree or the wall.

I trust this is useful information. Please contact me if you have further questions.

Sincerely,



Joseph McNeil
Board Certified Master Arborist #WC-0102B
Registered Consulting Arborist #299, ASCA
Contractors Lic. #482248 (Tree service C-61 D-49, Landscaping C-27, inactive)
ISA Qualified Tree Risk Assessor
ASCA Qualified Tree and Plant Appraiser

Department of Conservation and Development

30 Muir Road
Martinez, CA 94553-4601

Phone: 855-323-2626

Contra Costa County



John Kopchik
Director

Jason Crapo
Deputy Director

Aruna Bhat
Deputy Director

Maureen Toms
Deputy Director

Kelli Zenn
Business Operations Manager

PAYER: PATRICIA MCGREGOR
2776 W NEWELL AVE
WALNUT CREEK, CA 94595

APPLICATION #: CDT19-00036

TYPE: Tree Permit Review

Payment Type: Check

Check Nbr: 1644

ACCOUNT ITEM LIST:

Item #	Description	Total Fees	Current Paid	Total Paid
0047	Appeal (\$125)	\$125.00	\$0.00	\$125.00
0047	Appeal (\$125)	\$125.00	\$125.00	\$125.00
052B	Notification Fee (\$30)	\$30.00	\$0.00	\$30.00
TPS051X	Alteration of Protected Tree	\$500.00	\$0.00	\$500.00
Total Fees:		\$780.00	Paid:	\$780.00
			Balance:	\$0.00

ISSUED BY: DRECKMEYER-
WALTON

DATE: 12/20/2019

APPLICATION DESC: Applicant requests approval of a tree permit in order to remove 21 code-protected trees ranging in size from 8" to 43.5" and work within the dripline of 4 code-protected trees ranging in size from 10" to 33" for the construction of a new 4,000 square-foot single-family residence on a vacant lot.

SITE ADDRESS: 0 OLYMPIC BLVD, WALNUT CREEK, CA 94596

PARCEL: 238050007

NOTES:

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