

**APPEAL TO THE URBAN FORESTRY TREE COMMITTEE
CITY OF SPOKANE, SPOKANE, WASHINGTON**

Citizens for Sensible Transportation Planning,
Manito/Cannon Hill Neighborhood Council,
Cliff-Cannon Neighborhood Council,
Neighborhood Alliance of Spokane,
E.J. Foerster, Bettylee Shackleton-Boyd,
Linda Lewis, Valerie Collette, John Gould,
and Kari Nevin,

Appellants,

v.

City of Spokane,

Respondent.

SUMMARY OF APPEAL AND DECISION

Summary of Appeal: The appellants, Citizens for Sensible Transportation Planning, Manito/Cannon Hill Neighborhood Council, Cliff-Cannon Neighborhood Council, Neighborhood Alliance of Spokane, E.J. Foerster, Bettylee Shackleton-Boyd, Linda Lewis, Valerie Collette, John Gould, and Kari Nevin, appealed the decision issued by the Director of Parks and Recreation which authorizes the removal of 23 trees along Bernard Street between 14th Avenue and 29th Avenue, issued on March 16, 2006. The hearing was held before the Urban Forestry Tree Committee of the Spokane Park Board.

Issue: Whether or not the Director of Parks and Recreation abused his discretion in granting authorization to remove 23 trees along Bernard Street between 14th Avenue and 29th Avenue.

Decision: The decision of the Director is upheld.

FINDINGS OF FACT
BACKGROUND INFORMATION

Appellants: Citizens for Sensible Transportation Planning,
Manito/Cannon Hill Neighborhood Council,
Cliff-Cannon Neighborhood Council,

Neighborhood Alliance of Spokane,
E.J. Foerster,
Bettylee Shackleton-Boyd,
Linda Lewis,
Valerie Collette,
John Gould, and
Kari Nevin
Represented by Counsel, Karen Lindholdt
Attorney at Law
423 W. First Avenue, Ste. 240
Spokane, WA 99201

Respondent: City of Spokane, Parks and Recreation Department
Represented by Counsel Milt Rowland
Assistant City Attorney
City of Spokane
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

PROCEDURAL INFORMATION

Date of Decision being appealed: March 16, 2006

Date of Appeal: April 11, 2006, April 20, 2006 & April 26, 2006

Hearing Date: May 25, 2006 by the full Urban Forestry Tree Committee

Jurisdiction: The Urban Forestry Tree Committee of the Spokane City Parks Board has jurisdiction to hear this appeal pursuant to Spokane Municipal Code (hereinafter SMC) Ch. 12.02. While it appears that the third appeal was received after the court imposed deadline, No objection was received. Therefore, all three appeals will be determined.

Testimony: The following people testified at the hearing:

Jeff Perry
Arborist
City of Spokane

Betty Boyd
Appellant/Property Owner

Tony Madunich
Assistant Supervisor Parks and Recreation Department

City of Spokane

Tom Arnold
Director Engineering
City of Spokane

EXHIBITS

1. Spokane Municipal Code;
2. Director Stone decision on permit application and application for permit dated March 16, 2006;
3. Jeff Perry, Arborist report #1 made on December 9, 2006;
4. Jeff Perry, Arborist report #2 made on March 9, 2006;
5. Photographs of trees scheduled for removal;
6. Notice letters to E.J. Foerster, Linda Lewis, Bettylee Shackleton-Boyd, Kari Nevin from Director, Michael Stone dated March 16, 2006;
7. Power point of ordinances, photos of trees (for removal and planted trees);
8. Power point of factors related to application for tree removal permit process;
9. Declaration of Mike Stone, Director of Parks and Recreation Department;
10. Drawing of extent of street repaving project, one copy with tree locations;
11. Maps of trees along Bernard Street; and
12. Spokane Street Tree Inventory for 12 trees.

Other exhibits considered which were not admitted into evidence:

1. Email correspondence between John Covert and Jeff Perry dated May 17, 2006;
2. Spokane City Comprehensive Plan;
3. Spokane City Vegetation Management Plan dated August 6, 2002; and
4. Spokane City Arboricultural Specifications and Standards of Practice dated August 2002.

FINDINGS AND CONCLUSIONS

A hearing in front of the Urban Forestry Tree Committee of the Spokane Park Board was held on May 25, 2006, at which time exhibits were entered into the record and testimony was taken. The committee has reviewed the exhibits, listened to the testimony, and based on all materials in the record as well as the testimony at the public hearing, hereby makes the following Findings and Conclusions:

1. On March 3, 2006, Mr. Tom Arnold, Director of Engineering Services for the City of Spokane, filed an application for a street tree permit to remove 23 trees along Bernard Street between 14th Avenue and 29th Avenue. On March 16, 2006, Mr. Mike Stone, Director of Parks and Recreation for the City of Spokane, issued a determination permitting the removal of certain trees. The tree were segregated into three groups for purposes of the Director's decision:

- a. Unconditional approval to remove trees numbered 6, 7, 8, 12, and 21 because of “damage done to public improvements” and because “removal is necessary because of the installation of, or potential or actual damage to, such public improvements as outlined in SMC Section 12.02.910A”. The Director required that these trees be replaced with new trees appropriate to the location if possible.
 - b. Unconditional approval for trees numbered 3, 4, 5, 10, 11, 13, 14, 15, 16, 17, 18, and 19. The removal of these trees was based upon SMC 12.02.910A, “disease and/or degraded health.” The Director required that these trees be replaced with new trees appropriate for the location if possible.
 - c. Conditional approval for trees numbered 1, 2, 9, 20, 22, and 23. Removal was allowed pursuant to SMC 12.02.910A “based on damage done to public improvements and removal is necessary because of the installation of, or potential or actual damage to, such public improvements.” The actual removal was conditioned upon efforts to save the trees “through a below-ground root system evaluation done by Urban Forestry staff.” If such evaluation demonstrates that some or all of these six trees can be saved, then the Director reserved the right to withdraw the permit and “require reasonable protective measures” under SMC 12.02.914. However, if the evaluation demonstrates that “present or projected defects or damage to root systems that might affect the stability or health of these trees,” then they may be removed. Again, if the trees are removed, they are to be replaced with new trees that are appropriate for the location.
2. Appellants acknowledge that the Director of the Parks and Recreation Department is the appropriate person to authorize removal of trees along a city right of way per Spokane Municipal Code 12.02.936.
 3. SMC 12.02.912 provides that the Director may authorize removal of street trees whenever one or more of 5 conditions are met. To wit: the tree is hazardous; the tree is damaging public improvements... and removal is necessary because of actual or potential damage to, a sidewalk, parkway, curb, gutter, pavement, sewer line, underground utility or other municipal improvement. This section is consistent with the Arboricultural Specifications Manual at section 2.1 and the Vegetation Management Plan at section 2.1(f).
 4. According to the testimony: The trees scheduled for removal are located along Bernard Street, Spokane City, Spokane, Washington between 14th Avenue and 29th Avenue. In November 2004, the citizens of Spokane passed a bond issue designating street improvements and repairs throughout the City of Spokane. Bernard Street Improvement Project is included in this bond.
 5. Bernard Street was established in 1931 at a width of 40 feet. This width is not going to be changed under the project.
 6. On December 9, 2005, Arborist Jeff Perry performed a tree assessment/evaluation of the trees along Bernard Street between 14th Avenue and 29th Avenue. This evaluation was at the request of the City Engineering Department pursuant to the Bernard Street Improvement Project. On March 9, 2006, Mr. Perry performed an

additional physical evaluation of four out of six trees proposed for retaining under the project.

7. The assessment and Mr. Perry's testimony showed that all 17 trees were suffering from severely degraded health issues as well as damaging public improvements and needed to be removed immediately. The Committee heard testimony regarding each tree's health. There are 6 additional trees that the City will attempt to save during the reconstruction project. (This attempt to salvage 6 trees is an exception to policy and will involve additional expense and unusual construction techniques.) These 6 trees will have an arborist on site to supervise, examine, monitor and evaluate in an attempt to save these trees.
8. The appellants appear to be upset with the Bernard Street Project itself, and the process by which the project has been implemented and planned. Appellants did not appeal the street project.
9. The Director, Mike Stone, prior to his decision to issue the removal permits, reviewed the tree evaluation and recommendation report from Mr. Perry, Arborist, performed a personal site visit to view all the trees, reviewed the Spokane tree inventory and met with key landscaping staff including Mr. Perry.
10. The Director's decision to issue permits was consistent with the Spokane Municipal Code, Arboricultural Specifications Manual (page 4, section A) and the Vegetation Management Plan (Section 2.1). The Director exercised due diligence prior to making his decision.
11. The Director followed the proper criteria and procedures in issuing the removal permits.
12. There is sufficient evidence to support the Director's decision. The Director did not abuse his discretion in granting the permits to remove the trees along Bernard Street.

DECISION

Based on the findings and conclusions above, it is the decision of the Urban Forestry Tree Committee to uphold the decision of the Director of Parks and Recreation Department issued on March 16, 2006.

DATED this 07 day of June 2006.



STEVE SILKWORTH



ELIZABETH SCHMEDEL

NOTICE OF RIGHT TO APPEAL:

Aggrieved parties may appeal to the City Hearing Examiner within fifteen days of this decision by filing a notice of appeal with the Director with a copy also filed with the city Hearing Examiner.

There is no right of stay of any order pending appeal unless allowed by the Director, conditioned upon posting of a bond or other security or requirements as the Director may order. An appealing party may request emergency review of the Director's denial or conditioning of any stay, pending appeal, by the Chair of the Tree Committee. Consideration of such a request is at the Chair's sole discretion.

CONCURRENCE

As members of the Urban Forestry Tree Committee of the Spokane Park Board, we concur in this decision. We feel, however, it is a disconcerting move in the wrong direction. It appears that volunteer time and effort have been wasted in setting guidelines through passage of the Street Tree Ordinance in 1998.

We feel that the Standards of Street Design and Maintenance must be changed to meet the Street Tree Ordinance, Vegetation Management Plan, and the Arboricultural Specifications and Standards. Many of the problems of poor tree health could be alleviated if the City Council adequately funded the Urban Forestry Program.

These ordinances were passed by the City Council, elected officials acting for the citizens. Citizens' views of their City are reflected in the Street Tree Ordinance, the Vegetation Management Plan, and Arboricultural Specifications and Standards to ensure our urban street trees are healthy, diverse, and provide the canopy that benefits our urban landscape.


Melissa Burt


Kay Stoltz