

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 11/27/06		Item Number: <u>A-1</u>	
AGENDA ITEM: Appeal of Parks and Recreation Commission's Decision of October 10, 2006 to Deny a Permit to Remove Public Right-of-Way Trees Adjacent to 10890 Arizona Avenue.			
Contact Person/Dept.: John Rivera/PW; Bill La Pointe, PRCS		Phone Number: (310) 253-5616; (310) 253-6682	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒	Attachments: ☒
Public Notification: Studio Estates Residents via postcard (11/16/06); Leo and Estelita Bodner via telephone (11/16/06); Bruce Forman, Studio Estates Neighborhood Watch Commander via telephone (11/16/06); Master Notification List (11/22/06).			
Department Approval: Charles D. Herbertson, Public Works Dir. (by J. Rivera) 11/17/06		City Manager Approval: Jerry B. Fulwood (11/21/2006)	
City Controller Approval: Marlee Chang (11/21/2006)			

RECOMMENDATION:

The City Council should review the record of the meeting of the Parks and Recreation Commission (the "Commission") held on October 10, 2006, and the Commission's decision to deny Leo and Estelita Bodner's ("Appellants") application for a permit to remove public right-of-way trees adjacent to their property, located at 10890 Arizona Avenue, and determine whether there is a sufficient basis to grant the appeal and modify or overturn the Commission's exercise of discretion.

PROCEDURE:

1. Mayor calls for motion to receive and file all reports and notices.
2. Mayor calls for a brief staff report.
3. Mayor invites the Appellant to address the City Council.
4. Mayor invites the Respondent (City Staff) to address the City Council.
5. Mayor invites public comment.
6. City Council discusses the matter and arrives at its decision.

BACKGROUND:

On October 10, 2006, the Commission considered Appellants' application requesting a permit to remove five public right-of-way trees adjacent to their property, located at 10890 Arizona Avenue. The trees are located on the eastern side of Elenda Avenue, just south of Arizona Avenue, in the City-owned 10-ft. wide landscape

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border along the Studio Estates residential development (Attachment A). Appellants requested the removal of the trees due to their expressed concerns about the damage caused by the trees to their wall and swimming pool. At the conclusion of its discussion of this matter, the Commission denied the Appellants' request for a permit based on the Commission's determination that the Appellants did not prove sufficient reasons for removal of these trees, as set forth in Culver City Municipal Code ("CCMC") §9.10.040(C). The complete Commission decision letter, minutes of the October 10, 2006 meeting, and complete staff report packet are included with this staff report as Attachment B.

On October 17, 2006 the Bodners filed an appeal of the Commission decision with the City Clerks office (Attachment C).

DISCUSSION:

The policies and procedures for street tree removal are set forth in CCMC §§ 9.10.030 through 9.10.040. Acting in accordance with the CCMC, Appellants submitted a written request, including supporting documentation, for a permit to remove the trees through the Commission. Appellants' request for such permit was heard by the Commission on October 10, 2006.

After the Commission's consideration of City staff's report and Appellants' application materials, as well as testimony and arguments provided by Appellant, the Commission denied Appellant's permit on the basis that Appellants did not prove sufficient reasons for removal of these trees. The Commission's decision was in accordance with CCMC §9.10.040, which authorizes the Commission to grant a permit for the removal of street or parkway trees. In making its determination to deny Appellants' request, the Commission made the following findings:

- There are reasonable alternatives to removal of the trees (i.e. installation of a pool cover);
- The trees do not appear to pose a safety concern;
- The trees are not unhealthy nor in a weakened state; and
- Appellants' were not able to demonstrate that the alleged damage to their property met the minimum \$5,000 threshold.

The following information was also provided to the Commission and should be considered by the City Council:

Appellants' request is different from the typical tree removal request the City receives. Usually these requests are for removal of a single street tree from a City

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parkway in front of a residence. Any approved removal of a tree typically includes replacement by an approved tree specie from the City's Master Street Tree Plan.

Appellants' case is unique for at least two reasons. First, they are requesting the removal of five trees that are located in the City-owned 10-ft. wide landscape border next to Appellants' property line. Second, these trees were planted by the Studio Estates developer to meet one of the conditions of the development's approval when the City approved the project. These trees, as well as all landscaping surrounding Studio Estates, are maintained by the City through an assessment district (i.e., Landscaping District Number 1, Zone 1) which charges each Studio Estates homeowner an annual fee to help cover the cost of that maintenance.

The purpose of this original condition of approval was to help make Studio Estates compatible with the surrounding developed residential neighborhoods, as well as to reduce any impact to the community from the more dense housing project. Plans for the initial improvements for Zone 1 were approved in January 1979 (landscape irrigation system plans) and January 1980 (landscaping plans). Removal of these trees would, in essence, amend the conditions of approval for Studio Estates. As such, even if the City Council were to grant Appellants' appeal and overturn the Commission's decision to deny the permit, the request would still need to be reviewed by the Planning Commission, Redevelopment Agency and once again by the City Council to determine if the request is in compliance with the original conditions of approval or if the conditions should be amended to allow the removal/replacement of these trees. All three bodies were involved with the approval of the Studio Estates project originally and, therefore, revision of any of the conditions of approval for that project should be reviewed and approved by those bodies after application to the Planning Division and payment of any applicable fees.

The trees in question are three *Pinus canariensis* (Canary Island Pine) and two *Jacaranda mimosifolia* (Jacaranda). Please note that the species of the pines were mistakenly identified in the Commission staff report. Also, the trees in question are not located in a street parkway or median so they are not subject to the City's Street Tree Master Plan. Therefore, if the City Council decides the trees should be removed, we recommend that the City Council also direct that the species, size and number of replacement trees be specified by the Planning Commission, Redevelopment Agency and City Council, based on a recommendation of the Public Works Director. In choosing which species to recommend, the Public Works Director should consider the original intent of the condition of approval.

In reviewing the appeal request, staff has noted the following observations that the City Council may also want to consider during its discussion:

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1. There are three rows of trees planted along this segment of the border, *Ficus microcarpa 'Nitida (Ficus)'* in the parkway and *Jacaranda* and *Canary Island Pine* in the border.
2. There are a larger number of trees and the spacing of the trees is closer along this segment of the landscape buffer than exists along the rest of Elenda Avenue.
3. The removal of the *Canary Island Pines*, which are the trees planted closest to the perimeter wall, would have a significant impact on the skyline, but the remaining *Jacaranda* and *Ficus* trees would still provide a dense visual screen of the residences to and from the west side of Elenda Avenue.
4. The *Jacaranda* trees, which are a flowering tree, are being crowded out by the larger *Canary Island Pines* and *Ficus*.

Council should consider the record of the Commission meeting, particularly the basis for the Commission's decision, and determine whether there is sufficient basis to grant the appeal and modify or overturn the exercise of discretion by the Commission.

FISCAL ANALYSIS:

There is no fiscal impact to the City if removal is granted since cost for removal and replacement of the trees will be at the homeowner's expense.

ATTACHMENTS:

- A. Map identifying location of landscaped border and the Bodner Residence and photos of subject site and trees.
- B. October 11, 2006 Parks and Recreation Commission decision letter, October 10, 2006 Commission meeting minutes and staff report with attachments.
- C. October 17, 2006 request for appeal

MOTION:

That the City Council:

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1. Find that the Commission did not abuse its discretion in reaching its decision, and uphold the October 10, 2006 decision of the Commission to deny Appellants' application for a permit to remove five trees adjacent to their property at 10890 Arizona Avenue;

OR

2. Find that the Commission abused its discretion in reaching its decision, and reverse the Commission's October 10, 2006 decision and remand the matter to the Commission for further consideration (with appropriate instructions). (The reasons for this action should be stated on the record);

OR

3. Find that the Commission abused its discretion in reaching its decision, reverse the Commission's October 10, 2006 decision and order that the permit be issued (under whatever conditions the Council may deem appropriate, including the condition that such permit is subject to all necessary approvals of the Planning Commission, Redevelopment Agency and City Council, and that the species, size and number of replacement trees be specified by the Planning Commission, Redevelopment Agency and City Council, based on a recommendation by the Public Works Director in consideration of the original intent of the conditions of approval of the Studio Estates development.

OR

4. Provide further direction to staff.