

**FINDINGS OF FACT and FINAL ORDER
TYPE I REVIEW**

DATE: May 31, 2022

FILE NO.: 22-018 TREE

PROJECT NAME: Jewelberry Ridge Tree Removal

APPLICANT: Raze Custom Homes

OWNER: CM2D

LEGAL DESCRIPTION: T2S R4E Section 11AC Tax Lot 900

PROPOSAL: Remove three trees and retain nine trees

EXHIBITS:

Applicant's and Property Owner's Submittals

- A. Land Use Application
- B. Arborist Report dated April 21, 2022
- C. Arborist Report dated May 18, 2022

Additional Documents Included by Staff

- D. Final Order for File No. 18-014 SUB/VAR/TREE
- E. Tree Fence Inspection on May 11, 2021
- F. Email from Emily Meharg to John Feraris on May 11, 2021
- G. Pictures of Trees #45 and #101

FINDINGS OF FACT:

1. Section 17.102, Urban Forestry, applies to properties within the Sandy Urban Growth Boundary that are greater than one acre in area (including contiguous parcels under the same ownership). The site contains greater than one acre, therefore, the proposal must be processed to determine compliance with Section 17.102, Urban Forestry. The proposal is considered a Type I permit because fewer than 50 trees are proposed to be removed.
2. Section 17.102.20(A) states: "no person shall cut, harvest or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter." Section 17.102.80 specifies that violations of this section are subject to enforcement procedures contained in Chapter 17.06, specifically Section 17.06.80. **Tree removal or native vegetation removal without permit authorization may result in a fine as specified in Section 17.06.80.**

3. The applicant proposes to remove three (3) trees from the subject site. The three trees proposed for removal are Trees #26, #35, and #116 according to the Arborist Report from Teragan & Associates, Inc. dated April 21, 2022 (Exhibit B). Based on the arborist report dated May 18, 2022 the recommendation from the arborist is to also remove Tree #93. The arborist recommends removal of Trees #26, #35, and #116 as they are in poor health and have poor structural conditions. All three trees are assessed in detail on pages 1 and 2 of Exhibit B. Additionally, the arborist recommends removal of Tree #93 as it has a large Ganoderma conk on the south side of the trunk and evidence of decay below the conk.
4. Finding No. 86 in File No. 18-014 SUB/VAR/TREE (Exhibit D) stated the following: “Section 17.102.50 contains the tree retention and protection requirements. The 2.63-acre site requires retention of at least 8 trees that are in good condition and are 11-inches DBH or greater. The applicant proposes to retain the following 9 trees:
 - Two trees adjacent to the west property boundary (Trees #26 and 93)
 - Two trees adjacent to the east property boundary (Trees #2 and 3)
 - Four trees adjacent to the proposed Tract A pedestrian walkway (Trees #45, 46, 47, and 48)
 - One tree south of the proposed home on lot 2 (Tree #32).”
5. Trees #32 and #48 were conditioned by the Planning Commission in File No. 18-014 SUB/VAR/TREE to be protected. In email exchanges from June 2018 through February 2019 the property owner’s representative Pat Sisul and Planning Division staff agreed that Trees #32 and #48 could be removed.
6. The applicant and property owner still propose to retain 9 trees, but the trees proposed for retention are now Trees #2, #3, #3.1, #45, #46, #47, #50, #100, and #101. Tree #3.1 is less than 11 inches DBH and does not meet the minimum tree retention standards, but since the findings in Exhibit D specify that the property owner intended to retain nine (9) trees, Tree #3.1 shall be protected. Seven trees are defined to be in good health and two trees are defined to be in fair health. The two trees in fair health are Trees #45 and #101 (Exhibit G). Since Tree #45 was already defined for retention in File No. 18-014 SUB/VAR/TREE this tree can remain without any mitigation. Since Tree #101 is one of only eight (8) trees that exceeds 11 inches DBH that is viable to retain this tree will need to be retained, but because the tree is in fair condition, **the applicant or property owner is required to plant two mitigation trees in case Tree #101 dies or further declines in the future. The two mitigation trees shall be at least 6 to 8 feet in height at planting and shall be native evergreens. The location of the mitigation trees shall be reviewed and approved by staff prior to recording the tree protection covenant and prior to planting. The mitigation trees shall be planted between October 15 and November 15, 2022. Once the mitigation trees are planted the applicant shall call City staff for an inspection. The applicant or property owner shall aerate and amend the soil prior to planting the mitigation trees and shall submit documentation from the project landscaper stating that the soil has been amended and aerated prior to planting the mitigation trees. The mitigation trees shall be planted per the City of Sandy standard planting detail. All ties and burlap shall be removed from the root ball prior to planting. If the burlap cannot be completely removed from the root ball without compromising the integrity of the root ball, the burlap shall be**

removed from at least the top one third of the side of the root ball. If the mitigation trees are staked, the applicant or property owner shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after the first growing season but no later than one year from being planted.

7. To ensure protection of the required retention trees, the applicant or property owner shall record a tree protection covenant specifying protection of all trees approved for retention, the location of two additional mitigation trees, and limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the retention trees, two mitigation trees, and associated tree protection areas as detailed by Teragan & Associates, Inc. in Exhibit C, but with the protection area at least 5 feet beyond the dripline per Condition D. 13. of File No. 18-014 SUB/VAR/TREE. The tree protection covenant shall specify that future activity within the tree protection area, including but not limited to construction, structure installation, grading, and landscaping, shall require City review and approval. All trees marked for retention shall be retained and protected during construction regardless of desired or proposed building plans; plans for future houses on the proposed lots within the subdivision shall be modified to not encroach on retention trees and associated tree protection fencing.
8. Per Section 17.102.50(B.2), tree protection fencing shall be a minimum of six feet tall supported with metal posts placed no farther than 10 feet apart installed flush with the initial undisturbed grade. The Arborist Report (Exhibit C) states: "Appendix 4 provides a site map of the trees and proposed revised tree protection fencing locations based on the development thus far." **The applicant or property owner shall install tree protection fencing as indicated in Appendix 4 of Exhibit C of the Arborist Report for the nine (9) retention trees, but with the protection area at least 5 feet beyond the dripline per Condition D. 13. of File No. 18-014 SUB/VAR/TREE. The tree protection fencing shall be 6-foot-high chain link or no-jump horse fencing and shall have a sign that clearly marks the area as a Tree Root Protection Zone with the following language: "Tree Protection Zone. Do not remove or adjust the approved location of this tree protection fencing. Please contact the project arborist if alterations to the approved location of the tree protection fencing are necessary."** Should the fencing need to be adjusted, the applicant or property owner or project arborist shall contact Planning staff and obtain staff review and approval prior to relocating the fence. Inspections of retention tree fencing by a City official shall be completed prior to any earthwork or grading being conducted onsite. Protective fencing shall not be removed prior to the issuance of a certificate of occupancy for the property.
9. The tree protection fencing for Jewelberry Ridge was inspected on May 11, 2021, and was denied by staff member Emily Meharg (Exhibit E). On May 11, 2021, Ms. Meharg followed up the inspection denial with an email to John Feraris (Exhibit F). The tree protection fencing was never modified, and the property owner never called for a reinspection. **Prior to recording the plat for Jewelberry Ridge the applicant or property owner shall pay the fines assessed in the notice of penalty as issued on May 31, 2022.**

10. Due to concerns raised by the arborist in Exhibit C staff is unsure that all retention trees will grow to maturity. **If any of the nine (9) retention trees or two (2) mitigation trees die or are removed in the future, the mitigation ratio shall be at least 2:1. The applicant or property owner shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.**
11. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal be replanted. The land use application did not indicate if the stumps will be removed or left in place. **Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal shall be replanted with a groundcover of native species within 30 days of harvest.**
12. If the trees are removed during prime nesting season (February 1- July 31), **the applicant or property owner shall check for nests prior to tree removal.** If nests are discovered, **the applicant or property owner shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.**

DECISION:

The applicant is **approved** to remove Trees #26, #35, #93, and #116 and required to retain Trees #2, #3, #3.1, #45, #46, #47, #50, #100, and #101 per the **conditions of approval**.

CONDITIONS OF APPROVAL:

A. Prior to recording the plat for Jewelberry Ridge the applicant or property owner shall complete the following:

1. Install tree protection fencing as indicated in Appendix 4 of Exhibit C around all nine (9) retention trees defined as Trees #2, #3, #3.1, #45, #46, #47, #50, #100, and #101, but with the protection area at least 5 feet beyond the dripline per Condition D. 13. of File No. 18-014 SUB/VAR/TREE. The tree protection fencing shall be 6-foot-high chain link or no-jump horse fencing and shall have a sign that clearly marks the area as a Tree Root Protection Zone with the following language: "Tree Protection Zone. Do not remove or adjust the approved location of this tree protection fencing. Please contact the project arborist if alterations to the approved location of the tree protection fencing are necessary." Inspections of tree fencing by Planning Division staff shall be completed and approved prior to recording of the plat.
2. Plant two mitigation trees in case Tree #101 dies or further declines in the future. These trees shall be at least 6 to 8 feet in height at planting and shall be native evergreens. The location of the mitigation trees shall be reviewed and approved by staff prior to recording the tree protection covenant and prior to planting. The applicant or property owner shall aerate and amend the soil prior to planting the mitigation trees and shall submit documentation from the project landscaper stating that the soil has been amended and aerated prior to planting the mitigation trees. The mitigation trees shall be planted per the City of Sandy standard planting

detail. All ties and burlap shall be removed from the root ball prior to planting. If the burlap cannot be completely removed from the root ball without compromising the integrity of the root ball, the burlap shall be removed from at least the top one third of the side of the root ball. If the mitigation trees are staked, the applicant or property owner shall use loosely tied twine to tie the trees to the stake and the twine shall be removed after the first growing season but no later than one year from being planted.

3. Record a tree protection covenant specifying protection of all trees approved for retention, the location of two additional mitigation trees, and limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the retention trees, two mitigation trees, and associated tree protection areas as detailed by Teragan & Associates, Inc. in Exhibit C, but with the protection area at least 5 feet beyond the dripline per Condition D. 13. of File No. 18-014 SUB/VAR/TREE. The tree protection covenant shall specify that future activity within the tree protection area, including but not limited to construction, structure installation, grading, and landscaping, shall require City review and approval.
4. The applicant or property owner shall pay the fines assessed in the notice of penalty as issued on May 31, 2022, or shall get a decision on the appeal of the notice of penalty from the municipal judge.

B. General Conditions of Approval:

1. Per Section 17.102.60(1), all areas of exposed soils resulting from tree removal of Trees #26, #35, #93, and #116 shall be replanted with a groundcover of native species within 30 days of harvest.
2. The mitigation trees shall be planted between October 15 and November 15, 2022. Once the mitigation trees are planted the applicant or property owner shall call City staff for an inspection.
3. If any of the nine (9) retention trees or two (2) mitigation trees die or are removed in the future, the mitigation ratio shall be at least 2:1.
4. The applicant or property owner shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage the mitigation trees.
5. All trees marked for retention shall be retained and protected during construction regardless of desired or proposed building plans. Plans for future houses on the proposed lots within the subdivision shall be modified to not encroach on retention trees and associated tree protection fencing.
6. Should the tree retention fencing need to be adjusted, the applicant or property owner or project arborist shall contact Planning staff and obtain staff review and approval prior to relocating the fence. Protective fencing shall not be removed prior to the issuance of a certificate of occupancy for the property.

7. The applicant or property owner shall check for nests prior to tree removal. If nests are discovered, the applicant or property owner shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.
8. Future tree removal from the subject properties shall require additional permit approvals and if a permit is not obtained prior to removal of a tree, this violation may be subject to a fine per occurrence as specified in Section 17.06.80. Prior to obtaining City approval in the future, the applicant or property owners shall also be required to pay a third-party arborist review fee for any trees proposed for removal from the subject properties in the future.
9. The applicant or property owner shall maintain the mitigation trees in good condition. Per Sections 17.92.10(L) and 17.92.60(B), maintenance shall include necessary watering, weeding, and pruning at intervals sufficient to assure survival and growth.
10. Successors-in-interest of the applicant or property owner shall comply with requirements of this final order. In the event the property owner should sell or lease the property upon which the condition contained in this document apply, the sale or lease will be subject to the restrictions and conditions described herein. The conditions shall run with the land and are binding on property owner's heirs, personal representatives, successors and assigns.
11. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.
12. All other conditions in File No. 18-014 SUB/VAR/TREE still apply.



Kelly O'Neill Jr.
Development Services Director

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;

2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and
5. Payment of required filing fees.