

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

**DATE:** March 16, 2023

**FILE NO.:** 23-008 TREE

**PROJECT NAME:** 15296 Salmonberry Avenue Tree Removal

**APPLICANT/OWNER:** Bonnie Spillman

**ADDRESS:** 15296 Salmonberry Avenue

**LEGAL DESCRIPTION:** Lot 7 of the Sandy Woods subdivision

**PROPOSAL:** Remove one tree in compliance with the requirements of Chapter 17.102, Urban Forestry and restrictive covenant relating to tree protection for the Sandy Woods subdivision.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application
- B. Tree Health Assessment Report (Sibyl Weise, NW SavATree, ISA, TRAQ)

**FINDINGS OF FACT:**

1. The goals and policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.
2. The site has a Plan Map designation of Low Density Residential, and a Zoning Map designation of SFR, Single Family Residential.
3. 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 subject property is less than one acre; however, the two trees proposed for removal are required retention trees per a restrictive covenant relating to tree protection (Clackamas County Document No. 2019-028214). The requirement for retention of the trees occurred during the platting of the Sandy Woods subdivision in 2019 (Land Use File No. 18-002 SUB/VAR and Plat No. 4575). Therefore, the proposal must be processed as a land use application to determine compliance with provisions for removal of the required retention trees.

4. The recorded tree protection covenant (Clackamas County Document No. 2019-028214) identifies protected retention trees on Lot 7 of the Sandy Woods subdivision. The subject tree is numbered #446. Tree #446 was identified as a 22-inch DBH Douglas fir and was defined as viable for retention.
5. On November 17, 2020, the property owner was issued a notice of penalty for violation of SDC Chapter 17.102 and File No. 18-002 SUB/VAR due to unpermitted removal of four (4) other retention trees located on the property. The property owner did not pay the violation in accordance with the Sandy Municipal Code and the City of Sandy placed a lien on the subject property. **The applicant shall resolve this lien with the City.**
6. The applicant proposes to remove this tree, which can only be removed “upon a determination by a qualified professional that the Tree is diseased, dead, dying, or otherwise hazardous to persons or property in a way that can only be remediated by complete removal of the Tree” as outlined in the recorded tree protection covenant.
7. The applicant submitted a tree health assessment report (Exhibit B) from Sibyl Weise with SavATree Consulting Group. Ms. Weise is an ISA certified arborist with a TRAQ certification. The tree health assessment was very thorough and made the following observations and conclusions:
  - a. Observation: “There is one Douglas-fir (*Pseudotsuga menziesii*) located in the southwest corner of the property in the backyard of 15296 Salmonberry Ave, Sandy. The diameter at breast height is 24” with a height of approximately 65 feet. The tree used to have co-dominant stems however during a recent storm, one of the leaders failed. There was a cavity at the union of the two leaders that had decayed thus leading to the tear-out. I have also found evidence of Doug fir beetle and aphids on the foliage. There were three other Douglas-firs removed in the past 3-4 years that had multiple failures that damaged the house. All of the trees were located in a small fir grove including the neighbor’s, 15302 Salmonberry Ave, whose trees have also been failing.”
  - b. Conclusion: “Tree risk can be eliminated by removing the trees or the targets. My recommendation for risk mitigation is to remove the Douglas-fir and replant it with native species. The fir has drastically dropped its branches which is most likely due to new exposure to wind loads from the tree removals on the property. In addition, the tree has Doug-fir beetle and aphids which increases the likelihood of failures in the future and negatively impacts the health of the tree. There is too much irreversible damage that even with a plant health care program the trees would not improve. The removal recommendation will eliminate the risk factor. I am also working with the next-door neighbor to assess the damage/risk of the trees on their property. Trees can be managed but they cannot be controlled. Not all risk associated with standing trees can be eliminated. Even intact trees can be expected to fail all or in part under extreme weather conditions. The trees owners are responsible for selecting and implementing mitigation, scheduling of repeat assessments, and scheduling future monitoring and maintenance.”

8. Per Section 17.102.50, removal of protected trees requires replanting at a minimum 2 to 1 ratio. Thus, the removal of one (1) required retention trees requires planting a minimum of two (2) mitigation trees. Douglas firs are large native evergreen species and thus need to be mitigated by planting large native evergreen species. **The applicant shall do one of the following:**
  - **Plant two (2) mitigation trees on the property. If trees are planted on Lot 7, the cost of planting, watering, and maintaining the trees is the burden of the property owner, the tree species and size at planting shall be approved by Planning Division staff, and the property owner shall allow City staff to check on the health of the trees at one, two, and three years after planting.**
  - **Or, pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the two mitigation trees off-site (\$1,000 total).**
9. The recorded tree protection covenant (Clackamas County Document No. 2019-028214) details four required retention trees on Lot 7. **The applicant shall record an update to the tree protection covenant for Lot 7 detailing removal of all four trees. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall also update the recorded tree protection covenant to detail the species and location of the two mitigation trees. Within 180 days of this final order, the applicant shall obtain a covenant template for the recording from City staff, draft a covenant for staff review and approval, and then record the covenant and supply a copy to City staff.**
10. If the applicant chooses to plant mitigation trees, the trees will need to be kept alive and healthy. To help maximize the health and survival of the mitigation trees in the future, **the applicant shall aerate and amend the soil prior to planting the mitigation. The applicant shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage 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 shall use loosely tied twine to tie the trees to the stake. The mitigation trees shall be adequately watered for at least the first three dry seasons (summers).**
11. Section 17.102.60 specifies that all areas with exposed soils resulting from tree removal shall be replanted. The applicant did not submit a replanting plan or information regarding whether the stumps will be left in place or ground. **If the stump will be ground, the applicant shall cover all exposed soil resulting from removal of the tree.**

12. The applicant did not provide specific information regarding how the tree proposed for removal with this application would be removed. **The applicant shall have the tree removed such that it does not negatively impact adjacent trees or real property.**
13. The applicant did not indicate if there are nests in the tree proposed for removal. **If the tree is removed during prime nesting season (February 1- July 31), the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant 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 application for removal of one (1) hazard tree from 15296 Salmonberry Avenue (Lot 7 of the Sandy Woods subdivision) is hereby **approved** as modified by the conditions listed below.

**CONDITIONS OF APPROVAL:**

- A. Tree removal is limited to the one remaining Douglas fir tree at 15296 Salmonberry Avenue that was evaluated by SavATree.**
  - B. There are two options with approval of this tree permit application. Within 90 days of the date of this final order, the applicant shall do one of the following:**
    1. Plant two (2) mitigation trees on the property. The mitigation trees shall be 1.5-inch caliper if conifers or at least 6 feet in height if evergreen and planted per the City of Sandy standard planting detail. If the mitigation trees are staked, the applicant shall use loosely tied twine to tie the trees to the stake. The cost of planting, watering, and maintaining the trees is the burden of the property owner.
- OR-
2. Pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the four mitigation trees off-site (\$1,000 total).
- C. The following conditions shall apply to the hazardous tree removal:**
  1. If the stump will be ground, the applicant shall cover all exposed soil resulting from removal of the two trees.
  2. The applicant shall have the tree removed such that it does not negatively impact adjacent trees or real property.

3. Activity within the right-of-way (e.g., staging, etc.) requires a separate right-of-way permit through the Public Works Department.
4. If the tree is removed during prime nesting season (February 1- July 31), the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant 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.

#### **D. General Conditions of Approval**

1. The applicant shall record an update to the tree protection covenant for Lot 7 detailing removal of all four trees. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall also update the recorded tree protection covenant to detail the species and location of the two mitigation trees. Within 180 days of this final order, the applicant shall obtain a covenant template for the recording from City staff, draft a covenant for staff review and approval, and then record the covenant and supply a copy to City staff.
2. Future tree removal from the subject property 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.
3. If applicable, the applicant shall aerate and amend the soil prior to planting the mitigation trees. The applicant shall not anchor anything to the mitigation trees, compact the soil under the dripline, or otherwise harm or damage 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 shall use loosely tied twine to tie the trees to the stake. The mitigation trees shall be adequately watered for at least the first three dry seasons (summers).
4. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant 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 the applicant's heirs, personal representatives, successors, and assigns.
5. The applicant shall resolve the lien for unpermitted tree removal issued on November 17, 2020, with the City.

*Shelley Denison*

Shelley Denison  
Associate Planner

## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an 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 Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.