

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

DATE: August 3, 2023

FILE NO.: 23-025 TREE

PROJECT NAME: 37409 Solso Drive Tree Removal

APPLICANT/OWNER: Peter Shimkus

ADDRESS: 37409 Solso Drive

LEGAL DESCRIPTION: Lot 19 of Nicolas Glen No. 2

PROPOSAL: Remove one alder tree in compliance with the requirements of Chapter 17.102, Urban Forestry and the land use decision for Nicolas Glen.

EXHIBITS:

Applicant's Submittals

- A. Land Use Application
- B. Emails and Pictures from Peter Shimkus

Evidence Entered into the Record by Staff

- C. Nicolas Glen Subdivision scanned file

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policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.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. 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 land use decision for Nicolas Glen stated, "A minimum of four trees shall be provided on each lot. Street trees may be counted toward this requirement," and went on to state, "Trees with a four inch caliper measured 4.5 feet above the ground within the setback areas shall be preserved." The subject lot does not have any identifiable street trees as there is no planter strip in the right-of-way; however, it does appear there are two trees planted in the front yard. The applicant states that one of the trees in the front yard, a weeping cedar, needs to be removed as it damaged the water lateral to the house. Therefore, the proposal must be processed as a land use application to determine compliance with provisions for removal of the tree and subsequent

tree mitigation. Because the tree is not on a property one acre or greater, is not within a protected resource area (creek, wetland, or steep hillside), and is not specifically identified in a tree protection plan or restrictive covenant, it was determined that an arborist report was not necessary.

3. The alder tree that is being removed was identified by Arregreen Tree Solutions (Exhibit B) as having rot at the base of the tree and removal is recommended. The property owner, Peter Shimkus, states that the alder tree poses a hazard to his home and people in the backyard.
4. Per Section 17.102.60 removal of the protected tree requires replanting at a minimum 2 to 1 ratio. Thus, the removal of the one (1) required retention tree requires planting a minimum of two (2) mitigation trees. The alder tree being removed is a large native deciduous species and thus needs to be mitigated by planting native species. Rather than require the applicant to plant and maintain mitigation trees, the property owner has the option to pay a fee-in-lieu of mitigation trees at \$500 per tree. The fee-in-lieu of mitigation trees would be used by the City to plant native trees on City-owned property, within a conservation easement, or on a similar tract of land. This fee also includes a three-year establishment period, including watering weekly during the summer months for the first three years and any needed structural pruning, disease control, or replacement of the trees. **The applicant shall do one of the following within 90 days of the date of this final order:**
 - a. **Provide the City with plans to 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. If the applicant chooses to plant mitigation trees, they shall be planted after October 15, 2023, but prior to January 1, 2024.**
 - OR-**
 - b. **Pay a mitigation tree fee-in-lieu of \$500 per tree to relocate the two mitigation trees off-site (\$1,000 total).**
5. If the applicant chooses to plant the two mitigation trees, then a restrictive covenant shall be recorded to ensure the retention of the mitigation trees. **If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall record a tree protection covenant to detail the species and location of the two mitigation trees, on a form as approved by City staff, within 90 days of planting.**
6. If the applicant chooses to plant the two 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 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).

7. 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 stump 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.**
8. The applicant did not provide specific information regarding how the tree proposed for removal with this application would be felled. **The applicant shall have the tree felled such that it does not negatively impact any adjacent property. If removal of the tree damages a healthy tree, the applicant shall be subject to a fine.**
9. 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) alder tree from 37409 Solso Drive (Lot 19 of Nicolas Glen No. 2) is hereby **approved** as modified by the conditions listed below.

CONDITIONS OF APPROVAL:

- A. 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. Provide the City with plans to 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 two mitigation trees off-site (\$1,000 total).

B. 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 tree.
2. The applicant shall have the tree felled such that it does not negatively impact any adjacent property. If removal of the tree damages a healthy tree, the applicant shall be subject to a fine.
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.

C. Conditions related to mitigation trees, if applicable:

1. If the applicant chooses to plant the two mitigation trees, they shall be planted after October 15, 2023, but prior to January 1, 2024.
2. If the applicant chooses to plant the two mitigation trees on the subject property, the applicant shall record a tree protection covenant to detail the species and location of the two mitigation trees, on a form as approved by City staff, within 90 days of planting.
3. The applicant shall aerate and amend the soil prior to planting the two 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).

D. General Conditions of Approval:

1. 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.
2. 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.



Kelly O'Neill Jr.
Development Services Director

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.