

**FINAL ORDER OF THE
VENETA PLANNING COMMISSION
ASPEN HEIGHTS TREE REMOVAL PERMIT**

A. The Planning Commission finds the following:

1. The applicant has submitted information required by VMC 8.10.
2. The Veneta Planning Commission held a public hearing on July 2, 2007 to review and discuss a tentative plan for assessors map 17-06-36-34 tax lots 600 & 700 after providing proper notice according to Section 2.11 of the Veneta Land Development Ordinance No. 461. This hearing was continued at the August 6 meeting.
3. The Planning Commission followed the required procedure and standards as set forth in Veneta Municipal Code 8.10.

B. IT IS HEREBY ORDERED THAT the Veneta Planning Commission denies the Aspen Heights Tree Removal Permit based on the information in the staff report and the following findings of fact:

Veneta Municipal Code (VMC) Chapter 8.10 Tree Cutting, Destruction and Removal

8.10.030 Tree removal prohibited.

- (1) *Except as provided in VMC 18.10.060, no person shall remove more than three trees per parcel within a single calendar year without first filing a tree removal plan and obtaining a tree removal permit.*

8.10.060 Permits required with planned unit developments, subdivisions, and site plans.

- (1) *Any application for any planned unit development, subdivision, site plan or other zoning permit or approval, the plans for which call for tree removal which would require a tree removal pursuant to VMC 18.10.030, shall be accompanied by an application for a tree removal permit, together with the required filing fee under VMC 8.10.050.*

At the time the subdivision plans were submitted, it was standard procedure for the City to require a tree removal permit as a condition of approval. The applicant has applied for a tree removal permit as required.

8.10.080 *Tree removal standards.*

- (1) *The city administrator, in consultation with the city engineer and the fire chief, shall approve, approve with conditions or deny the permit, as provided in VMC 8.10.090. However, the city administrator may, at his or her discretion, refer the permit to the city planning commission.*

This application was referred to the Planning Commission by the City Administrator.

- (2) *The city's consideration of the permit shall be based on the following standards:*

- (2)(a) *The conditions of the trees with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular traffic safety.*

Several of the trees slated for removal have been identified as unhealthy or hazardous by the applicant. Most of the trees are healthy and in good condition.

- (2)(b) *The impact the trees' removal has on the environmental quality of the area, including but not limited to, the protection of nearby trees and windbreaks; air quality, fish and wildlife; erosion, soil retention and stability; volume of surface runoff and water quality of streams; scenic quality; and geological sites.*

Protection of nearby trees and windbreaks:

Windthrow on adjacent properties was brought forward as a concern, especially for the homes in Sherwood Forest subdivision adjacent to lots 2-4. Onsite consultation with a certified arborist confirmed that removal of trees adjacent to these properties would expose neighboring trees, as well as the remaining on-site trees to increased wind stress. The proposed plan does not protect nearby trees and windbreaks.

Air quality:

There will be no significant effect on the air quality of the area due to the proposed tree removal. However, trees in general do play a significant role in maintaining and improving air quality. Although the removal of trees from a single property may not have a statistically significant effect on air quality, it is in the City's best interest to prevent unnecessary removal of trees on a city-wide basis in order prevent needless impacts to air quality. Indeed, this is a stated purpose of VMC 8.10 as follows: "*The purpose of this chapter is to ...minimize the cutting or destruction of trees and wooded areas within Veneta. This chapter is intended to... retain a livable environment through the filtering effect of trees on air pollution and sound, to protect soil, air, water, fish and wildlife resources*". Because smaller building footprints or alternative construction methods which

would yield essentially the same overall density and do not involve clear cutting the site are available (namely, custom engineered foundations and limited grading on a lot by lot basis), the City finds that the proposal needlessly impacts air quality to an avoidable extent.

Impacts on fish and wildlife & Soil Retention and Stability

Runoff from this site ultimately drains to the Long Tom River, which provides habitat for cutthroat trout, considered a species of concern by ODFW. As stated in the PBS review of the geotechnical report by prepared by K&A, “Established vegetation is the best prevention against erosion. Whereas, a contractor is required to make a conscious effort to maintain the BMPs during construction, little or no effort is required to maintain existing vegetation on a site. Any lapse in maintenance increases the potential for sediment delivery offsite during a storm event. Therefore, maintaining existing vegetation as long as possible reduces the potential for erosion; however, other factors, such as access and safety, may be overriding concerns.”

Erosion control on the site is of utmost importance. The applicant has a 1200C erosion control permit from DEQ, and grading and erosion control plans approved by the City Engineer which cover erosion during the construction of the public improvements. These approved grading and erosion control plans are based on the previously approved tree permit, including only limited grading on individual lots. Due to the slope of the area, if the site were entirely graded at one time, significant erosion is likely to occur after the public improvements have been completed due to graded lots sitting fallow as home construction progresses. As construction of the homes is likely to occur over more than one building season, preventing erosion from cleared and graded home sites which remain vacant presents an ongoing inspection and enforcement burden upon the City. In addition, the City’s responsibilities as a Designated Management Agency for reducing Total Maximum Daily Loads (TMDL’s) of pollutants requires special attention to reducing sedimentation from erosion during and after construction.

The City finds that the proposal has the potential to create unnecessary erosion and impacts to water quality, including that of fish bearing streams. The City finds that consideration of tree removals and grading on a lot by lot basis as was proposed in the approved tree removal permit minimizes the area of disturbance on each lot and provides for reasonable use of the property while preventing post improvement erosion and impacts on fish and wildlife.

Volume of surface runoff and water quality of streams:

According to the PBS report of July 30, 2007 trees minimize the likelihood that soils will become saturated. However, all surface runoff should have been accounted for in the approved stormwater detention plans, including the increase attributable to the conversion of a forested site to urban uses.

Comments above regarding erosion and water quality impacts are herein incorporated .

The City finds that the proposal has the potential to create unnecessary erosion and subsequent impacts to water quality, including that of fish bearing streams which would be prevented by utilizing alternative construction methods on a lot by lot basis as noted in the approved Tree Removal Permit.

Scenic Quality

Adopted City planning documents do not indicate that this area should be protected for their scenic value to the community. However, VMC 8.10 states that:

“The purpose of this chapter is to establish a process and standards which will minimize the cutting or destruction of trees and wooded areas within Veneta. This chapter is intended to protect the scenic beauty of the city, to retain a livable environment through the filtering effect of trees on air pollution and sound, to protect soil, air, water, fish and wildlife resources, and to provide visual contrast to the built urban environment through the maintenance and protection of trees and wooded areas in the city.”

It is clear from this statement that the scenic values of trees are considered important in a general sense and that although specific tree protection areas may be more clearly defined (such as the Northeast Employment Center), the protection of trees and the aesthetic qualities they bring to an urban environment are of importance throughout the City and their needless destruction should be minimized.

The City finds that consideration of tree removal and grading on a lot by lot basis as proposed in the approved tree removal permit, coupled with the use of custom home designs to minimize the area of disturbance on each lot provides for reasonable use of the property while preserving at least some of the scenic qualities currently provided by the forest in this site. The City finds that the proposal creates unnecessary and avoidable impacts to the scenic qualities of the site, and that alternatives exist which preserve at least some of these qualities while allowing the same overall density of development.

- (2)(c) *Whether it is necessary to remove trees in order to construct proposed improvements or to otherwise utilize the applicant's property in a reasonable manner.*

It is not necessary to remove the trees as indicated on the tree removal plan in order to allow reasonable use of the property. A tree permit has already been granted which included tree removal to allow localized grading for smaller building areas. The approved tree plan has a prominent note stating that:

House footprints and driveway locations shown hereon are preliminary and should be considered subject to change. These footprints are intended to show minimum typical lot impacts by future home construction in order to determine the amount of initial tree removal. Actual footprints, driveway locations, etc. may require additional tree removal in the future. Any additional tree removal will be reviewed as part of the building permit review process for each lot. Driveway locations shown hereon are not intended to indicate or dictate actual driveway locations.

Based on this note, it is clear that the applicant anticipated changes to the tree plan in the future, and that these changes would occur on a lot by lot basis during the building permit stage. The approved plan, with possible changes to accommodate actual building footprints, represents a reasonable and prudent alternative to the proposed site wide grading and tree removal. The fact that the applicant builds only a very limited range of home types which, when placed in areas of steep slopes, require extensive grading to create flat building envelopes, does not mean that such development is necessary to ensure reasonable use of the property. Because other means of constructing homes on the site are available which would achieve the same overall density while preserving trees and existing vegetation, the City does not find that the proposed tree removal is necessary to ensure "reasonable" use of the property.

- (2)(d) *In the event that no Plot Plan has been approved by the City, removal of trees shall be permitted on a limited basis consistent with the following criteria:*

The subdivision plan represents the plot plan, therefore, a plot plan has been approved and the additional criteria of section 2(d) are not applicable. However, as each lot is developed, these criteria may be applied because the building permit represents the plot plan for each individual lot.

- D. This denial shall become final on the date this decision and supporting findings of fact are signed by a representative of the Veneta Planning Commission, below. A Planning Commission decision may be appealed to the City Council within 15 days**

after the final order has been signed and mailed. An appeal of the City Council's decision must be submitted to the Land Use Board of Appeals within 21 days of the Council's decision becoming final.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.

James Eagle Eye, Chairperson
Veneta Planning Commission

Date