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## Planning and Community Development Department City of Bellingham

TO: Rick Sepler, Director, Planning and Community Development Department  
Nicole Oliver, Director, Parks and Recreation Department  
Eric Johnson, Director, Public Works Department

FROM: Lindsay Kershner, Planner II

DATE: September 22, 2020

RE: CODE ENFORCMENT ASSOCIATED WITH UNPERMITTED CLEARING ACTIVITY LOCATED AT  
1109 FRANKLIN STREET AND THE ABUTTING STREET RIGHT-OF-WAY

Below are findings of fact associated with unpermitted clearing activity at 1109 Franklin Street and the abutting street right-of-way:

Sequence of events on September 16, 2020:

1. On September 16, 2020 at 2:30pm I received a voicemail from Therese Norton stating that a large tree at 1109 Franklin St. (site) was being cut down. Ms. Norton said she lived across the street from the site. I am familiar with the site for two reasons, one, because I recently processed the land use applications for a three-lot short plat, titled the P. Haley Short Plat, and associated variance requests (SUB2019-0036, VAR2019-0005)(**Attachment A**), and two, because I responded to a complaint from a neighbor in late 2019 that the rear portion of the property (abutting the alley) was cleared and gravel was applied to create a parking area for the customers/staff of the dental office across the alley. The property owner of 1109 Franklin St. also owns and is a dentist at the dental office addressed 1100 Ellis St. This activity required city permits and therefore a code investigation activity (case number CIA2020-0002) was initiated and resolved after the property owner obtained the required permits.
2. Around 2:50pm, I called Ms. Norton back to get more information and determine what tree was being cut down. She said it was a large tree in Franklin St. and that it was actively being cut by a tree company and that the foreman would not provide their name. I told her I would come out to the site to see what was happening.
3. Prior to leaving for the site, I did not check the city's permit system, Trakit, to see if there were any issued permits for tree removal and/or clearing.
4. Around 3:15pm I arrived near 1109 Franklin St. and saw a person with a chainsaw toward the top of a tall tree (more than 20 feet) and nearly all the limbs had been removed. There were other people that appeared to be working for the tree removal company (wearing hard hats and harnesses, carrying chainsaws) walking near the tree that was being cut down. There was also an excavator on-site and exposed soil on/off site. I took photographs of the tree being cleared (**Attachment B**).

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**Planning**  
210 Lottie Street  
Bellingham, WA 98225  
Phone: (360) 778-8300  
Fax: (360) 778-8302  
TTY: (360) 778-8382  
Email: [planning@cob.org](mailto:planning@cob.org)  
[www.cob.org/planning](http://www.cob.org/planning)

**Community Development**  
210 Lottie Street  
Bellingham, WA 98225  
Phone: (360) 778-8300  
Fax: (360) 778-8302  
TTY: (360) 778-8382  
Email: [cd@cob.org](mailto:cd@cob.org)  
[www.cob.org/planning](http://www.cob.org/planning)

**Building and Development Services**  
210 Lottie Street  
Bellingham, WA 98225  
Phone: (360) 778-8300  
Fax: (360) 778-8301  
TTY: (360) 778-8382  
Email: [permits@cob.org](mailto:permits@cob.org)  
[www.cob.org/permits](http://www.cob.org/permits)

5. I spoke with Ms. Norton and asked if she knew who was overseeing the tree removal. She pointed to a person in a silver hard hat that was standing across Edwards St. from the site near two police officers.
6. I introduced myself to the police officers and to the person in the silver hard hat, who I was told by Ms. Norton oversaw the clearing activity (foreman), if they were overseeing the tree removal. The foreman did not introduce themselves. I asked if the foreman had a street tree permit to remove the tree because I was very certain that the tree was not located on private property, but in the Franklin Street right-of-way. The foreman said they were just hired to do the work and didn't know if the owner had a permit. I asked if the owner was around and they did not know. I saw multiple people standing outside the office watching the tree removal activity, so I went up to the office and asked the staff standing outside if Dr. Haley was available. The administrative staff person said that Dr. Haley was not in the office and therefore I could not confirm whether they had a permit to remove the tree.
7. During this time the people actively cutting down the tree were taking it down in pieces.
8. After confirming that the property owner was not available, I walked back to the foreman and said that I was going to get a stop work order from City Hall because they did not have a permit to remove a tree in the street right-of-way. In a loud voice the foreman told me that I had better be correct that the tree was in the street because on a previous tree removal job they had been told to stop by city staff and there were financial implications. The foreman also said they would sue the city if I was wrong.
9. City council person Lisa Anderson, who lives near the site, was also speaking with the police officers and the foreman. Ms. Anderson told me that she knew the company removing the tree was from Rawls tree service because she had previously used their services on her own property. There were multiple work trucks that the tree cutters were walking to and from, that were parked near and on the property at 1109 Franklin St. There were no company names on the trucks.
10. Ms. Anderson and I walked north of the property to try and see the surveyed northeast property corner.
11. At this time, the tree service staff began cutting the base of the tree while the tree was still approximately 50 feet tall. They had a rope tied to the top of the cut tree that was being pulled south towards Edwards St. as one person cut the base of the tree with a chainsaw.
12. Ms. Anderson and I could see a survey company's white stake with flags located west of the tree, but could not see the actual property pin, which is a piece of rebar with a yellow cap.
13. The tree was then pulled down onto the Franklin St. right-of-way.
14. Then I left the site and drove to City Hall to look in the city's permit system to determine if there were permits issued for clearing on and off site and obtain a stop work order if needed.
15. There was a street tree permit (number STP2020-0019) issued for the property to plant two trees in Franklin St., but there were no city permits to clear the subject Douglas fir tree in Franklin St. or to clear more than 500 square feet of the site (land disturbing activity).
16. I obtained a stop work order from City Hall and around 5:30pm I went back out to the site to post the stop work order. Ryan Nelson, Planner II, met me at the site. The employees of the tree clearing company were no longer on-site.
17. I confirmed that the Douglas fir tree was in the Franklin Street right-of-way because the northeast property pin was exposed, and the tree stump was located approximately three feet east of the pin.
18. From the time I left the site to retrieve the stop work order to when I returned later, more vegetation on the site and in the Franklin Street right-of-way was cleared and soil was exposed.
19. I posted the stop work order in the Franklin Street right-of-way, near the southeast corner of the site.

20. Multiple photographs were taken of the cleared site, the property corners, the posted stop work order, etc. (**Attachment C**).
21. On September 20, 2020, I sent an email to the land use consulting firm, AVT Consulting, who were the applicants for the P. Haley Short Plat and variance applications. The email requested that they send the property owner erosion control BMP's (supplied by Rick Nolan, Public Works inspector) to ensure none of the exposed soil leaves the site and enters the city's stormwater system.
22. On September 21, 2020, the city received an email from Ali Taysi with AVT Consulting stating that they had received the email on Thursday from Dr. Parker requesting that their firm facilitate communication with the city regarding the violations that took place on Friday (**Attachment D**).
23. Also, on September 21, 2020, the city received an electronic copy of the recorded P. Haley Short Plat from AVT Consulting staff. The short plat was recorded with the Whatcom County Auditor's office on September 15, 2020.

Discussion of potential violations of the BMC:

24. During the public comment period associated with the short plat and variance applications, there was a public comment requesting that the subject Douglas fir tree northeast of the site would be preserved. The city responded to this public comment in our recommendation on the short plat and variance to the city's Hearing Examiner. The response was, 'The other public comment was regarding concern about a Douglas fir tree that would potentially have to be cut down with new development. It was determined that the tree is in the Franklin St. right-of-way on the northeast corner of the Proposal and should not be impacted by the proposed subdivision.' The no impact determination was made because the applicant intended to keep the existing single-family residence on the property and the proposed development on the two new lots would be a distance from the Douglas fir tree that would not impact the tree's critical root zone. The city's Hearing Examiner noted the public comment in her decision to approve the short plat and variance applications.
25. Prior to the city's preliminary approval and/or recommendation to approve a short plat, an applicant must prove that Bellingham Municipal Code (BMC) section 23.08.030, Performance Standards of the Land Division ordinance is met. One of the standards, BMC 23.08.030(C), states, "Natural features, that may or may not be regulated by other code provisions, including but not limited to trees, topography, shorelines, streams, wetlands, habitat, geologically hazardous areas, and associated critical area/shoreline buffers, should be incorporated into the overall land division design through preservation to the extent feasible."
26. The city determined that BMC 23.08.030(C) was met for the proposed short plat and variance applications in part because the Douglas fir tree was going to be preserved with the proposed short plat. Therefore, clearing of the subject Douglas fir appears to be in violation of the chapter and may be subject to the penalties in BMC 23.52.010.
27. Per the Definitions section of the city's Land Clearing ordinance, BMC 16.60.040, a tree is defined as, "a plant over 20 feet in height," and the definition of a significant tree is, "a tree of any species that is six inches in diameter or greater measured at breast height." The subject Douglas fir tree was more than 20 feet in height and six inches in diameter at breast height.
28. Also, per BMC 16.60.040, "'Clearing' means any cutting or removal of vegetation in any manner exceeding the extent of blazing as defined above." Blazing is defined as, "minor nonvehicular cutting or removal of vegetation, including trees, shrubs or groundcover, sufficient for line-of-site surveying and foot access trails to the extent that the site is not otherwise significantly disturbed."
29. On Wednesday, September 15, 2020, I observed the subject site and portions of the Franklin St. right-of-way were cleared of vegetation (grass) and the subject Douglas fir tree. The vegetation and

tree removal were not necessary for line-of-site surveying because the site was already surveyed for the subject short plat.

30. Per BMC 16.60.070, the Exempt Activity section (A), "Clearing of less than 500 square feet in area on any lot or parcel, but not to exceed 500 square feet on contiguous property under the same ownership; provided, that the area being cleared does not occur within any critical area, its associated buffer or within the Lake Whatcom watershed as specified in Chapter 16.80 BMC and does not require other permits or SEPA review."

The cleared area on the lots exceeded 500 square feet, therefore the clearing activity would not be exempt from a city permit. The cleared area was not within any critical area or with the Lake Whatcom watershed.

31. Per BMC 16.60.070, the Exempt Activity section (B), "Cutting, clearing or removal of vegetation within any fully developed (see "Developed land" in BMC 16.60.040) lot, parcel, street or utility right-of-way or park land which would not require other permits or SEPA review." The cutting clearing and removal of vegetation was partially within a fully developed street (Franklin), lot (1109 Franklin St.) and may be on the recently approved undeveloped Lot 3 of the P. Haley Short Plat.
32. Per BMC 16.60.080(A)(1), "No clearing or removal of vegetation shall be permitted on any undeveloped or partially developed lot, parcel, street or utility without a valid building, street or utility construction permit or an approved management plan for the nonstructural activities listed in subsection (A)(2) of this section." The city has no record of permits being issued to clear vegetation on Lot 3 of the P. Haley Short Plat.
33. Per BMC 16.60.080(B), "If the proposal (*clearing activity*) conforms to the requirements of this chapter, the PCDD and the public works department shall provide written authorization to the property owner to proceed. No regulated nonexempt clearing activity shall be performed prior to issuance of this authorization." The clearing activities that took place at the site were regulated nonexempt and were not authorized by the city.
34. The clearing activities that took place on the site and in the Franklin Street right-of-way may be in violation of multiple sections of BMC 16.60.
35. Per BMC 13.40.060(A), "*Trimming and Removal of Trees*. No person shall perform major pruning or remove trees in planting strips, improved rights-of-way, or other public places, or cause or authorize any person to trim, prune or remove trees in public places, without first filing an application and procuring a street tree permit from the city." The clearing activities that took place at the site are in violation of the subject city code because it occurred without a street tree permit from the city, and therefore may be subject to the penalties in BMC 13.40.150.
36. Per BMC 15.42, *Stormwater Management*, land disturbing activities for new development or redevelopment is a regulated activity that shall not be undertaken without first obtaining approval from the city. The land disturbing activities that took place on the site, Lot 3 of the P. Haley Short Plat and in the Franklin Street right-of-way may be in violation of BMC 15.42 and subject to penalties in BMC 15.42.100-110.

In conclusion, based upon the above findings staff believes the unpermitted clearing and land disturbing activities, including the removal of significant Douglas fir tree within the Franklin Street right-of-way, were in violation of BMC 23.08.030(C), 16.60.080, 13.040.060(A) and 15.42 and should be subject to code enforcement fines and/or penalties.

