From:	Fred Schmidt
To:	Julie Underwood; Steve Szafran; City Council; Rachael Markle
Cc:	Peter Eglick
Subject:	Council July 29 Agenda Item: Proposed Ordinance 669 concerning "Chapter 20.20.048 - Significant Tree Definition"
Date:	Thursday, July 25, 2013 4:58:06 PM
Attachments:	Letter to Council, et al 072513.pdf

Attached please find a copy of Peter Eglick's letter to you of today's date in the referenced matter. A copy is also being faxed to you.

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Via Fax and E-mail
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City Manager

Rachael Markle
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City Council
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Re: Council July 29 Agenda Item: Proposed Ordinance 669 concerning "Chapter 20.20.048 – Significant Tree Definition"

Dear Manager Underwood, Director Markle, Mr. Szafran, and Councilmembers:

This letter is submitted on behalf of the Innis Arden Club, Inc. to follow up on prior letters on the Club's behalf dated 7/19/13 and 7/12/13 concerning the topic noted above. It appears from the most current Agenda Item summary accompanying proposed Ordinance 669 that some progress has been made in addressing the issue raised by the Club in earlier correspondence. The current staff memo describes the issue and a proposed remedy as follows:

> Since the July 15 Council meeting the City has received another letter of concern regarding the amendment to the definition of Significant Tree (Attachment D). One of the main issues articulated in this letter is a concern that by striking "healthy, windfirm and nonhazardous" from the definition of a Significant Tree that a hazardous tree could be considered a Significant Tree and subject to the same rules

> regarding removal, replacement and retention. The author of the letter further states that treating hazardous trees the same as significant trees represents a distinct departure from the current regulations.
>
> This assertion is correct. All trees that are eight inches or greater in diameter at breast height if they are a conifer and 12 inches or greater in diameter at breast height if they are non-conifer would meet the proposed definition for a Significant Tree. However, the proposed definitional change is not intended to regulate hazardous trees that qualify for a full exemption, under SMC 20.50.310(A), the same as nonhazardous trees and trees that may be hazardous but do not represent an active and imminent hazard. In response to the comment letter, staff recommends that Council amend the Planning Commission recommended language to read as follows (new language highlighted):
> Any ~~healthy, windfirm, and nonhazardous~~ tree eight inches or greater in diameter at breast height if it is a conifer and 12 inches or greater in diameter at breast height if it is non-conifer ~~deciduous~~ excluding those trees that qualify for complete exemptions from Subchapter 5. Tree Conservation, Land Clearing and Site Grading Standards SMC 20.50.310(A).

The response is appreciated as is the clarification in the modification staff proposes. That said, it begs the larger question because even the clarification would still burden removal of some types of hazard trees, at least in single family zones. Such an approach is flawed in two respects.

First, as noted in the Club's earlier letters, hazard trees should not be counted against the partial exemption quota under any circumstances. Whether "imminent" or otherwise, it is counterproductive for the City to have in place regulations that discourage and burden abatement of a hazard tree, as identified by a qualified expert. As SMC 25.50.310A.1.a acknowledges, the standard legislative goals cited in support of tree preservation legislation do not transcend the fundamental flaw in disadvantaging abatement of identified hazards. This principle applies regardless of whether the identified hazard is sufficiently "imminent."

The key should be expert identification of the hazard – not the hazard's imminence. These are natural processes after all, not subject to precise prediction. Imposing a standard that encourages gambling on the timing of abatement is not a sound approach: whether imminent or not no professionally confirmed hazard tree should be counted against the partial exemption quota. If this requires correcting wording adopted in 2012 that staff suggests was intended to bring some but not all hazard trees within the partial exemption quota (through the definition of "significant") then it is none too soon to make such a course correction now.

A second consideration also applies to this issue. Briefly, it is that the Code as it is now written appears to be tilted toward burdening single family lot owners while excusing owners in other zones from complying with the web of requirements on tree removal. Broad brush municipal enlistment of trees on private property to combat various environmental ills not caused

by those properties -- or by the City as a whole (which has maintained its tree cover over the decades) -- is debatable. A policy that largely places the burden of implementation on one classification (property in single family zones) when those properties have demonstrably maintained more tree cover than others invites questions about the policy's legal legitimacy.

In summary, the Innis Arden Club acknowledges the modification suggested by staff. It is a half-step in the right direction. A complete step would add language to ensure that no confirmed hazard tree would be subject to the partial exemption quota for removal.

Respectfully,

Peter J. Eglick
Attorney for the Innis Arden Club Inc.

cc: client