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Heritage Tree Status for Donna Maria Oak Denied

By *Andrea A. Firth*

Charlotte and Jim Smith were back before Orinda's City Council on Tuesday, September 7th, requesting that the 39-inch diameter Coast Live Oak at the foot of their property along Donna Maria Way be designated as a Heritage Tree. But a poorly written ordinance and the lack of consent from the adjacent property owner led the City Council to vote unanimously to deny the Heritage Tree designation.

The City Council's review of the Smith's Heritage Tree application-the only application that has been presented to the City for this tree distinction since the ordinance was adopted over 15 years ago-had been continued since May pending a survey to determine the specific location of the tree's trunk, which resides on the Smith's property, and the tree's protected perimeter (the area under the tree's canopy plus a 10-foot strip), which extends onto three nearby parcels. Heritage Trees are protected through stringent standards on pruning, relocating, and removing and special requirements apply if grading or building is to take place near the tree. For example, no concrete, asphalt or impervious paving material may be placed within the protected perimeter of a Heritage Tree.

The question that challenged the Council was whether the Heritage Tree designation was confined to the owners of the tree or required the consent of all property owners impacted by the designation. "It's not the clearest ordinance in the world," said Orinda City attorney Osa Wolff, "It does not seem to anticipate this situation." Although she acknowledged that the Smith's are the owners of the massive oak tree and that the ordinance does not specifically state that the consent of other property owners is required, Wolff believed that the intent of the ordinance was to have the consent of all affected parties.

Several residents of Donna Maria Way spoke in support of Heritage Tree status for the stately oak that serves as a focal point for their neighborhood, however, Michael Olson, speaking on behalf of J and J Ranch, LLC which owns the adjacent property at 24 Adobe Lane, did not agree. Olson and his partners John French and Peter Branagh have proposed building 13 single-family homes on the approximately 20-acre property that also includes the historic Moraga Adobe which they plan on restoring and opening to the public.

"We absolutely love the tree and its location at the entrance of our proposed project," said Olson. "We have no plans to impact the tree," he added, noting that they would likely remove some of the asphalt that is located in the protected area under the tree, and this asphalt would be replaced elsewhere but farther from the tree's base. Olson stated that he would not have any problem with the Heritage Tree designation once his project has gone through the planning process with the City but applying that status now would significantly impact their ability to develop the property. Orinda's Planning Director Emmanuel Ursu estimated that Olson's project would go before the Planning Commission in approximately two months.

Following the Council's decision, Smith stated that he and his wife were disappointed with the outcome. "I didn't quite follow the logic of the city attorney as far as ownership of the tree," said Smith, who feels the City has missed an opportunity to have an active Heritage Tree program. Regarding the proposed location of the entrance to Olson's new development just beyond his driveway and oak tree, Smith stated that he would prefer that all three access points to the site, one other on Donna Maria Way and one from the south end of Dolores Way, be utilized to minimize the traffic impacts on the neighborhood.

The Council also directed City Staff to refund the Smith's application fee and move to revise the Heritage Tree ordinance to be more clear.

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