

Background, Findings and Decision
regarding the removal of the
State Street Trees
(302 State Street S: Ladd & Bush Building—US Bank)

March 12, 2013

Over the past six months staff has been considering the issue of whether to approve removal of the five street trees in front of the downtown Ladd & Bush (US Bank) Building on State Street S. Removal of these trees was requested by US Bank in November 2012. This request was heard by the Shade Tree Advisory Committee on January 9, 2013. The Committee recommended saving the trees.

This document presents the background and history of the proposed removal, the code provisions that govern street trees, analysis of the facts and law, and the Public Works Director's decision on the matter.

Decision

The request by US Bank to remove the five Japanese Zelkova trees on the south side of State Street is **GRANTED**. Removal is conditioned on the following:

1. US Bank shall obtain a permit from City of Salem Parks Operations prior to removal of the trees.
2. US Bank shall bear all of the costs of removal, including, but not limited to, cutting the trees, stump grinding, clean up and leveling of the tree well.
3. Upon removal of the trees, the City of Salem shall enlarge the existing tree wells to the current standard and make other repairs as necessary to the surrounding sidewalks and underground conduit.
4. US Bank shall purchase and install new trees in the existing tree wells along State Street within 15 business days of the completion of the City's repair work. The new trees shall comply with the street tree requirements of the *Salem Revised Code*, be no less than four-inch caliper, and shall be approved by the City Forester prior to planting.
5. US Bank shall warrant the new trees for a period of two years and shall be responsible for replacement of any tree that does not survive the warranty period.
6. US Bank may, at its own discretion and expense, replace the Commercial Street trees along its building frontage at the same time the State Street trees are replaced. Conditions 1, 2, 4 and 5 shall apply to the new Commercial Street trees, and the replacement trees shall be planted at the same time as the State Street trees.

7. This decision is effective on March 19, 2013 and expires on April 30, 2014. Extension of this date shall require a new hearing before the Shade Tree Advisory Committee.
8. Appeal of this decision shall be to the City's hearings officer, per SRC 86.160. Consistent with the requirements of SRC 20J, the appeal period shall expire on April 5, 2013.

Background and History

In 2010, the trees on both the north (State Street) and west (Commercial Street) sides of the US Bank building were recommended for removal by Public Works Department Engineering Division staff. The removal recommendation was in anticipation of the Streets and Bridges Bond-funded projects to repave both Commercial and State Streets. The street trees along both sides of the building had caused extensive damage to the adjoining sidewalks, curbs and street asphalt.

On July 13, 2010, the Shade Tree Advisory Committee heard the proposal and recommended removal of the Commercial Street SE trees, but reserved action on the State Street trees to a later date. Their recommendation was based upon the fact that the Commercial Street project was scheduled to begin immediately, but the State Street improvement was scheduled for two years later. The Committee requested that the proposal for the removal of the State Street trees be brought back before them ahead of the street improvement project. The Public Works Director accepted the Committee's recommendation. The Commercial Street trees were removed, and the street improvement project was completed in 2011. In addition to repaving, the project also repaired the curb and sidewalk along the west side of the US Bank building. The existing Japanese Zelkova trees were replaced with Princeton Sentry Ginko trees. (See memorandum to Peter Fernandez, from Jan Staszewski, July 15, 2010.¹)

As the Engineering staff started to work on the State Street improvement project, a careful examination of the trees by the City's Urban Forester indicated that the tree roots could be pruned enough to remove the negative effects to the curb and asphalt and the trees saved. The State Street improvement project was completed in summer 2012. It included replacement of the curb and removal of certain parts of the sidewalk along the north side of the US Bank Building, in addition to the repaving of the street. Because the repairs were completed without the need to remove the trees, staff did not make a request to the Shade Tree Advisory Committee to revisit the issue, as had been previously planned.

A request for removing the State Street trees, however, was made by US Bank. The case for removing the trees was made by David Hammes, Assistant Vice President, US Bank, in a letter staff dated July 10, 2012. In his letter, Mr. Hammes stated the Bank's reasons for wanting to have the trees removed. They were:

1. The trees obscure the sight lines to the building;

¹ Attachments to the July 15, 2010, memorandum include the Shade Tree Advisory Committee July 13, 2010, meeting minutes and a copy of the follow-up letter to Mr. David Hammes, US Bank, dated July 20, 2010. In the letter, staff requests payment for the removal of the Commercial Street SE trees. It should be noted that the tree removal and replanting on Commercial Street SE, as well as the curb and sidewalk repair, was funded by the Streets and Bridges project.

2. The tree roots contribute to the cracking and deterioration of the sidewalk;
3. The tree roots and leaves clog the public stormwater lines; and
4. The trees are not historically contributing.

The Shade Tree Advisory Committee considered the request to remove the State Street trees on July 17, 2012. In this case, the Committee understood that the trees did not have to be removed for the street improvement project. The Committee recommended that the trees not be removed. The Committee suggested that the trees could be pruned to allow more sight lines to the building. In the staff report to the Committee and the summary report to the Director, the City's Urban Forester also offered an alternative that every other tree could be removed to provide additional sight lines to the building. (See memorandum to Peter Fernandez, from Jan Staszewski, July 24, 2012.²)

Prior to the Public Works Director making a final decision on the matter, Mr. Ryan Allbritton, US Bank Region President, verbally appealed the Shade Tree Advisory Committee's recommendation. His reason for appealing the decision was a lack of proper representation at the Committee hearing. He had assumed that since Department staff had been supportive of the tree removal in 2010, that the decision to remove the trees would have been pro forma. Given the Director's personal recollection of prior discussions related to the "promised" removal of the trees, the matter was again referred to the Committee for recommendation.³

In advance of the second hearing before the Shade Tree Advisory Committee, Mr. Doug Lethin, C&R Remodeling (agents for US Bank), provided a letter to the Committee stating the reasons why the Bank wanted the trees removed. In it, he restated many of the issues brought forth by Mr. Hammes in his July 2012 letter, and added the following:

1. Cited SRC 86.130(c), which states in part, "trees shall not be planted in a location which would obscure significant architectural features (of historic buildings)"; and
2. Freezing conditions on the north side of the building cause added hazards related to leaves.

The matter was reconsidered by the Shade Tree Advisory Committee on January 9, 2013. A number of citizens attended the meeting and provided testimony on the issue. Proponents of the tree removal stated that:

- Removal of the State Street trees had been agreed to (by City staff) in 2010;
- US Bank was (and is) willing to replace the trees and, in fact, had offered to pay for the replacement of both the State and Commercial Street trees in 2010; and
- There is concern over the liability issues related to existing and future cracked sidewalks and curbs.

² Attachments to the July 24, 2012, memorandum include the Shade Tree Advisory Committee July 17, 2012, meeting agenda, staff report and minutes; and a copy of Mr. Hammes' letter.

³ It should be noted that Engineering staff had been supportive of removing the trees on both Commercial and State Streets. The record indicates, however, that the Urban Forester did not recommend removing the State Street trees in either hearing before the Shade Tree Advisory Committee.

Testimony from the opponents to removing the trees can generally be summarized as; “the mature trees offer greater shade, are better looking than the smaller trees recently planted on Commercial Street, and provide an aesthetic that takes years to create.” In addition, the Committee received five emails and a citizen’s petition with 22 signatures of downtown business owners and employees all supporting retention of the trees.

After considering the testimony, the Committee once again recommended that the State Street trees not be removed. (See memorandum to Peter Fernandez, from Jan Staszewski, January 28, 2013.⁴)

Code Provisions

The permit and review process for the removal of the trees is governed by *Salem Revised Code*, Chapter 86. The code chapter governs the planning, planting, maintenance, care, and removal of trees on public property for the City of Salem. The pertinent sections of Chapter 86, are summarized below.

- 86.165. Creation of Shade Tree Committee within Parks Advisory Board. The committee is comprised of three Salem Parks and Recreation Advisory Board members and three at-large citizen volunteers. The committee is advisory to the Director of Public Works and hears controversial tree issues and make recommendations thereon. Committee recommendations are considered by the Director, but are not binding upon him.
- 86.020. Permit Required to Cut Trees. Requires a permit to cut any tree that is planted on any public street within the city.
- 86.030(b). Application; Conformance to Terms of Permit. In addition to a permit, removal of a street tree within the Salem Downtown Historic District or the Central Business District requires a hearing before the Salem Shade Tree Advisory Committee.
- 86.130(c). Planting, Cutting, and Pruning of Trees. The following guidelines apply to the planting of trees in the Salem Downtown Historic District and the Central Business District: (1) Trees shall not be planted in a location which would obscure significant architectural features. (2) Trees shall not be planted in a location which would obstruct an entrance to a building. (3) Only trees of a columnar nature or open limb structure and not otherwise prohibited by SRC 86.120, may be planted. (4) Trees shall be planted a minimum of three feet from the curb of the street. (5) Tree branches shall be at least seven feet from any building.
- 86.160. Appeals. Appeals of final decisions by the Director are contested cases, as defined in SRC 20J.020. The applicant may appeal the final decision by filing a notice of appeal, according to the procedures set forth in SRC 20J.220. The appeal shall be held according to procedures set forth in SRC Chapter 20J.

⁴ Attachments to the January 28, 2013, memorandum include the entire record of the meeting.

Findings

The record indicates that a number of issues were brought before the Shade Tree Advisory Committee with respect to the removal of the State Street trees. Additionally, there is a need to analyze the proposal from a policy and code basis. Each of these issues are enumerated and analyzed below.

1. Aesthetics. There is a difference of opinion between the tree removal proponents and opponents as to the aesthetic quality of the trees. One faction believes that the mature trees provide a visual appeal. The other believes that the difference in size between the Commercial and State Street trees creates a poor aesthetic. While the aesthetics of mature trees may be debated, the record indicates that “the [zelkova] trees have grown beyond their anticipated design.”⁵
2. Tort liability. The proponents of removing the trees stated their concern over the safety issues related to cracked and heaved sidewalks and curbs. The tree-caused damage to the sidewalk and curbs around the US Bank building were repaired by the City-funded project. Additionally, it is the City’s responsibility to repair damage to sidewalks caused by street trees, not the adjoining owner’s responsibility.⁶ As such, the liability argument by the tree removal proponents is not pertinent to the tree removal decision.
3. Additional maintenance requirements due to leaves and roots. The proponents of removing the trees state that the existing trees create additional maintenance requirements due to dropping leaves in the fall and root encroachment into the stormwater drainage facilities. Any deciduous tree planted in the public right of way, by definition, will create leaf litter in the fall. The record indicates, however, that the Princeton Sentry Ginko trees planted on Commercial Street drop their leaves in a more concentrated manner than the existing Japanese Zelkova trees.⁷ The record also indicates that staff believes that at least one of the Zelkova trees may, in fact, be impacting the stormwater drainage facilities at this location.
4. Historic contributing. The proponents for removing the trees assert that the trees on State Street are not historic. While it may be true that the existing trees are neither historic nor designated as heritage trees, the photographic record indicates that trees have always bounded the building.⁸ The existing trees appear to have been planted in the 1970s. SRC 86.130(c) speaks to trees in the Salem Downtown Historic District and offers a number of criteria key to this issue.

⁵ Staff comments in July 24, 2012, memorandum.

⁶ SRC 78.154(c) Duty of the City. The City shall be responsible for repairs to correct damage caused by trees located in public rights-of-way, and all repairs to curb ramps at street corners and intersections, subject to yearly appropriations and as prioritized by the Council.

⁷ “Ginko would not be associated with sidewalk disruptions and their leaf fall is concentrated in a small window of time so as to reduce regular and continuous leaf pick up.” Memorandum from Staszewski to Fernandez, July 15, 2010.

⁸ Photographs from the 1890s show mature trees on both sides of the building.

- a. SRC 86.130(c)(1) states, “trees shall not be planted in a location which would obscure significant architectural features.” The original landscape plan for downtown did not anticipate that the zelkova trees would grow to their current height and width. “The artist rendering [of the 1974 streetscape design] illustrated that the ‘mature’ trees would complement the buildings not obscure them.”⁹ However, the existing trees have grown to be substantially larger than originally thought. As such, the record clearly indicates that the trees are, in fact, obscuring the north sight lines to the historic building.
- b. SRC 86.130(c)(3) states, “only trees of a columnar nature or open limb structure . . . may be planted.” While the existing zelkova trees are columnar in nature, they are not of an open limb structure thus further limiting the sight lines to the building.
- c. SRC 86.130(c)(5) states, “tree branches shall be at least seven feet from any building. A site visit indicates that the top branches of the existing trees are much closer to the building than the required seven feet.

Basis of Decision

The decision to grant the request to remove the zelkova trees on State Street is based upon the following:

1. The trees have grown well beyond their design size and obscure the sight lines to a historic building;
2. The tree branches of the existing trees are not of an open nature as required by code;
3. The tree branches are closer to a historic building than is allowed by code; and
4. At least one of the trees may be impacting the adjacent stormwater system.

⁹ July 24, 2012 memorandum.