

F. C. Hoffman  
161 Walter Hays Dr.  
Palo Alto, CA 94303

September 9, 2010

Menlo Park Environmental Quality Commission  
c/o Engineering Department  
701 Laurel Street,  
Menlo Park, CA94025

Re: Heritage Tree Permit Application for Removal  
of Podocarpus Tree at 615 Laurel Avenue

This letter opposes Mr. David Y. Lo's letter to the Commission of August 17, 2010 ("LL") appealing the City Arborist's decision approving the removal of the subject tree.

I write as the owner of the property at 619 Laurel Ave, which is adversely affected by that tree, and as the joint applicant, with Mr. Daniel Hitt, the owner of 615 Laurel Avenue, for that tree's removal.

The joint application was required by the order contained in the "Judgment after Court Trial", in San Mateo Superior Court, of July 2, 2010, in the case of "Fred Hoffman v. Daniel Hitt" ("J"). A copy of that judgment and a copy of the Court's "Statement of Decision" of that date ("SD") were attached to the application.

I also write in compliance with the further requirement of the judgment that Mr. Hitt and I "fully cooperate with one another and the City of Menlo Park in the application process and in seeking to obtain the requisite permit to remove Tree #224." J page 2. (Tree #224 is the podocarpus tree.) Despite that requirement, I do not expect Mr. Hitt to oppose Mr. Lo's letter.

Mr. Lo contends: (1) that neither the City Arborist nor the Court properly considered what he calls "reasonable and feasible alternatives" to the removal of the tree (he writes that these were "glossed over", LL page 6, and that city officials did not examine the situation "with the rigor consistent with the standard set by the [Heritage Tree Ordinance]... ., LL page 4), and (2) that the environmental interests of a community (sometimes that of Menlo Park, sometimes a global or world community comprising people and trees –"a tree is a ...member of the world community", LL page 2) were not properly weighed in the determination of the removal of the tree.

Mr. Lo's contention re alternatives to removal:

Mr. Lo's contention that alternatives to removal were not properly considered is contrary to the facts.

Four arborists have inspected the site and concluded that the tree should be removed. They are: (1) Mr. Henry Ardalan, who was hired by Mr. Hitt and Mr. Lo in 2006 to evaluate the tree situation and who appeared at trial to testify on my behalf, (2) Mr. Ray Morneau, who appeared as my expert witness at trial, (3) Mr. Henry Kramer, who completed the required "Arborist Form" attached to the permit application, - all three are ISA (International Society of Arboriculture) certified arborists – and (4) Mr. Juan Alvarez, the City Arborist. I know that Mr. Ardalan and Mr. Morneau, and I believe that Mr. Kramer and Mr. Alvarez considered and rejected alternatives to removal. (Mr. Lo describes the first two arborists as "unlikely to be unbiased", LL page 7, denying their objectivity merely because they were my witnesses and ignoring the fact that Mr. Ardalan's testimony was consistent with the contents of the report he sent to Mr. Hitt in 2006.)

The Court also inspected the site and, after hearing all the evidence, also concluded that the tree should be removed:

Plaintiff is entitled to relief ... for common law private nuisance and ... relief resulting from the property damage caused by, and continuing to be caused by, the encroaching roots and expanding trunk of ... [the podocarpus tree]. The Court has considered all alternatives to removal raised by Defendant and testified to by the three arborists at trial and has determined removal is the only feasible and appropriate remedy... . J page 2.

As to the necessity of removal, the Court wrote:

Furthermore, after considering all the evidence, there is no doubt in the Court's mind that this tree has already damaged Mr. Hoffman's property. Specifically, Tree #224 has put immense pressure on the neighbor fence between Mr. Hoffman's and Mr. Hitt's property and caused it to dislocate. It has caused Mr. Hoffman's gate not to properly close, and it has definitely uprooted his walkway. Fortunately, there is no concrete evidence that the tree's roots have already damaged the foundation to Mr. Hoffman's house. However, based on the evidence presented at trial, it is more likely than not that the tree's roots are also damaging the step leading to Mr. Hoffman's kitchen door and are headed toward, if not already at or under, the foundation of his house. SD pages 10-11.

The Court considered four alternatives and found none feasible:

(1) The Court found it "readily obvious" that it would be impossible to move the tree. SD page 11.

(2) As to cutting the roots,

The Court is overwhelmingly persuaded that cutting the roots will either kill the tree or jeopardize its stability and thus make it more dangerous than it already is. Further, the Court concludes that the tree is posing somewhat of a risk as it currently stands based upon the improper pruning that has been done to that tree by Mr. Hitt himself. The Court heard much evidence about how the canopy is now weighted on one side versus the other; that there are "stub cuts" which are going to cause improper growth and potential disease; and generally, how the tree has not been properly maintained. The Court believes that the strength of that tree

has already been weakened and therefore cutting roots makes no sense and is not a feasible alternative. SD page 11.

(3) As to a root barrier, the Court wrote:

As every expert pointed out, the roots must first be cut before a root barrier could be installed. Even if the roots did not have to be cut, the experts opined that barriers have been around only about twenty years or so, and nobody knows with certainty how effective they are going to be or how long they will last. The Court found Mr. Morneau's testimony persuasive on this issue, to wit, that the tree roots could grow downwards, eventually go below the root barrier, and then come up on the other side. A root barrier might last temporarily but does not appear to be a permanent fix. SD page 11-12.

(4) Lastly, the Court considered a remedy "discussed by the experts" of installing a "permeable walkway" such as a rubber sidewalk", and concluded: "Based on the evidence presented at [t]rial, there is no doubt in the Court's mind that such is also not a proper or permanent fix." SD page 12.

After discussing and rejecting these alternatives, the Court also considered, in coming to its decision, Mr. Ardalan's testimony that they, "in addition to not working, would also be more costly than the expense in removing the tree." SD page 12.

In concluding its discussion on the subject of removal versus alternatives, the Court wrote:

In sum, there is only one reasonable conclusion that can be reached here. Having considered all the alternatives in order to prevent further damage to Mr. Hoffman's property and potentially severe damage to both Mr. Hoffman's property and Mr. Hitt's property, the Court has determined that Tree #224 must be removed. SD page 12.

(To assist the Commission in its considerations, I attach copies of six numbered photos. The podocarpus root is highlighted with pink paint. A 12 inch ruler indicates scale. ## 1 and 2 show the root coming from under the fence between the two properties and headed beneath a piece of concrete which is under the cement base of the brick step leading to my kitchen door. #3 is an overhead photo of the root. ## 4 and 5 show the point at which the root dips beneath the piece of concrete. #6 shows how the cement base to the step has been lifted above the adjoining walkway and how the brick step has been similarly lifted.)

Mr. Lo's contention re community interests:

The interests of the people of Menlo Park in preserving certain trees are protected by the City's Heritage Tree Ordinance. That ordinance establishes regulations for the removal of heritage trees in order to retain as many as possible "consistent with the purposes of this chapter and the reasonable economic enjoyment of private property." Section 13.24.010.

The fact that people outside of Menlo Park – Mr. Lo's "global community" - are indirect beneficiaries of the ordinance or that some residents of Menlo Park have strong feelings

about the preservation of trees should not in any way influence the application of the standards set forth in Section 13.24.040 of the ordinance for determining if there is good cause for issuing a permit to remove a heritage tree. Those standards themselves establish all the criteria necessary to such a determination. The City Arborist has determined that a permit should be issued and, in doing so, has certainly followed the requirements of the ordinance. For Mr. Lo to ask that the City go beyond the criteria of the ordinance is to ask that it disregard the terms of the ordinance and apply some extralegal, undefined criteria.

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Before closing, I should correct some assertions made by Mr. Lo and otherwise comment on his letter:

1. Throughout his letter Mr. Lo expresses his concerns for the interests of the community and the importance of trees to the environment. As to trees, Mr. Lo's concerns are highly selective, centering solely on the podocarpus. There are four Monterey pines on 615 Laurel Ave. which Mr. Morneau, in his report of November 22, 2009, made after inspecting the conditions of the trees on that property, recommended be removed because they are infected with "pine pitch canker fungal disease". (The report was made available to Mr. Hitt.) Three of the four pines are heritage trees. I do not know if the condition of these pines constitutes a violation of Heritage Tree Ordinance section 13.24.025 (which requires property owners to maintain and preserve all their heritage trees in a state of good health), but presumably the continued existence of these infected trees creates a possible threat of spreading the disease to Monterey pines elsewhere in the City. Even respecting the podocarpus, we have the Court's comment, quoted on page 2 above, noting that that tree itself has not been properly maintained. The Court also noted that instead of removing the tree as their arborist, Mr. Ardlan, had recommended, Mr. Hitt "personally removed hundreds of pounds of weight off the canopy on the southwest side of the Podocarpus." SD page 4. He testified at trial that this was done without a permit.
2. Mr. Lo's community concerns are also selective, centering on the environmental benefits of the podocarpus. But he and Mr. Hitt have in the past repeatedly disregarded conditions on the property at 615 Laurel Ave. which were detrimental to the Menlo Park community and which required the City to take corrective enforcement actions.
3. After writing that Mr. Hitt might not have filed an application for a removal permit "if he were free to speak", Mr. Lo inconsistently writes that Mr. Hitt "voluntarily" complied with the Court's order. LL page 3. In a footnote there he also writes that "The free speech issue was ... effectively ignored in the court's decision". In fact, the Court discussed its consideration and rejection of that issue on page 13 of the Statement of Decision.
4. Mr. Lo writes that the podocarpus is at least five feet away from my house. That may be true of the trunk, but the roots are under the kitchen step and are "headed toward, if not already at or under, the foundation..." SD page 11.

5. Mr. Lo attached pictures of podocarpus trees close to other houses and wrote that the owners aren't worried. LL page 5. Apart from the irrelevancy of situations in other locations to that at my place, I wonder how Mr. Lo knows of the state of mind of those owners, whether the buttress roots of those trees are in fact directed to and damaging or may damage their houses and, if so, whether the owners are aware of the danger.
6. At LL page 5, Mr. Lo wrote of the alternative of a permeable walkway, which, as noted on page 3 above, the Court determined was not a proper fix. Common sense indicates that the situation will not be altered at this late stage by putting a permeable walkway over very large roots already in place and with their direction of growth already fixed.
7. Mr. Lo wrote that the walkway was broken by Mr. Morneau, "allegedly" to expose the buttress root. LL page 6. The walkway was not removed by Mr. Morneau, but by a workman I hired, on the instruction of my lawyer, so that the cause of damage would be visible.
8. Mr. Lo wrote that a structural engineer was refused inspection to the inside of my house. LL page 6. The refusal was based on the fact that I had not, in the complaint, alleged any structural damage, so there was no justification for such an inspection. He also wrote that the engineer testified that the buttress root "was not in a position to threaten" the foundation. As noted on page 2 above, the Court concluded to the contrary. Indeed, any close examination of the site will reveal roots headed towards the house and one already directly under and lifting a piece of concrete which is directly under the cement base of the brick step to the kitchen door, cracking and lifting the base and the step.
9. Mr. Lo wrote that the conclusion to be drawn from an offer to drop the lawsuit for a "6-figure payment" leads to "the obvious conclusion that the tree isn't such a threat after all... ." LL page 7. The contrary is obvious: such an offer reflects my estimate of economic damage suffered as a result of the tree and other matters covered in the complaint. Obviously the situation is one of "material interest" to me, even though I no longer occupy the property, despite Mr. Lo's assertion to the contrary. LL page 7.
10. Mr. Lo attached a picture, B2, labeled "our yard on the day of the judge's visit" showing pictures displayed on the side of a garage wall and some of a number of containers of nursery plants which had been set around his place. These were present for an arborists' visit on October 26, 2009. The pictures were absent sometime after the Court's visit on March 11, 2010.
11. Despite the Court's order that Mr. Hitt and I jointly apply for a removal permit, the first form of the application sent by Mr. Hitt's lawyer to my lawyer for my signature did not have the box for removal checked and was to be accompanied by the judgment but not the statement of decision. Instead there was to be attached a letter from Mr. Hitt's lawyer. It explained that the issuance of a permit was in the City's discretion, which of course it is. It also conveyed Mr. Hitt's request that the site be visited and that consideration be given to trial testimony of two of Mr. Hitt's expert witnesses regarding alternatives to removal and the cause of damage to the brick step. After my lawyer objected and raised the possibility of filing a motion to

enforce and for contempt and sanctions, the application was submitted in its current, proper form, without the letter and with the Court documents. It is clear that Mr. Hitt could not himself appeal against his own application without risking being in contempt. Instead, the Commission has before it the appeal by Mr. Lo, Mr. Hitt's domestic partner. LL page 1.

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I apologize for writing at such length but felt obliged to do so in the circumstances.

I request that the Commission approve the issuance of the permit.

Sincerely,

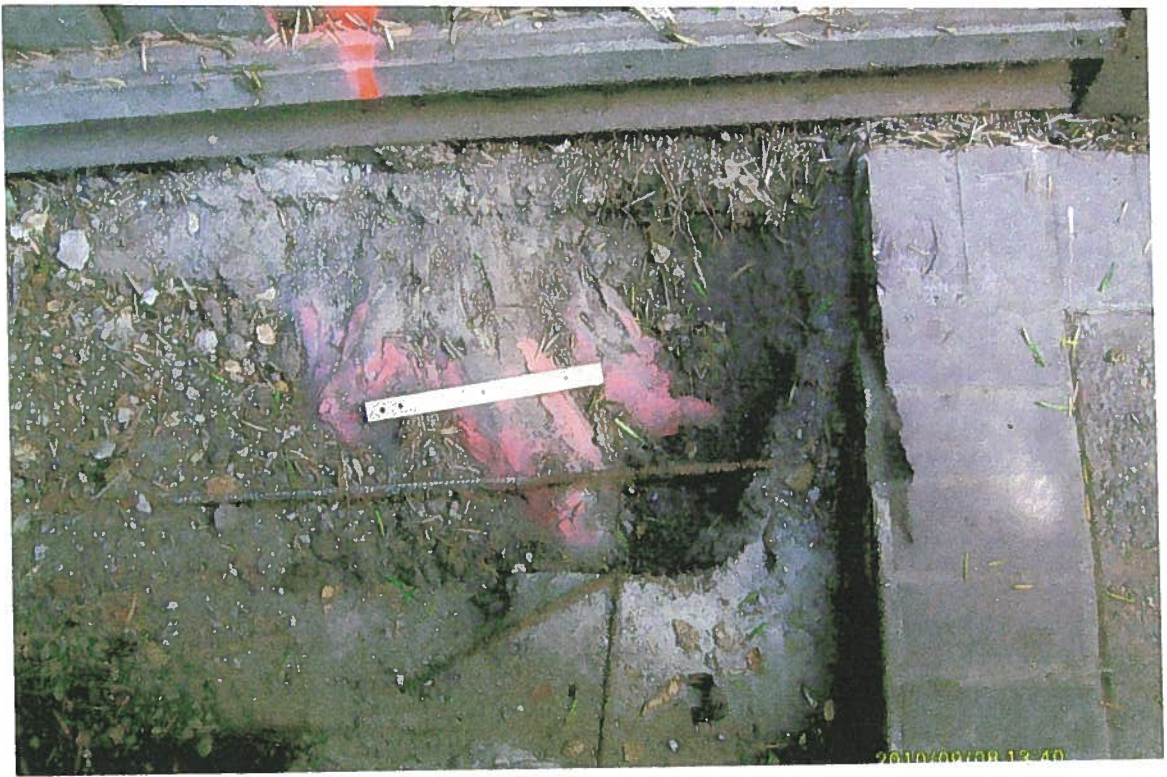
A handwritten signature in cursive script, appearing to read "Stephen".



#1



#2



#3



#4



#5



#6