



MEMORANDUM

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ENGINEERING DIVISION
CITY OF WALNUT CREEK

CONFIDENTIAL

DATE: December 8, 2005

TO: Dan Richardson, Public Services Director; Rachel Lenci, City Engineer; Dan Cather, Public Services Manager; John Davis, City Arborist

FROM: Thomas Haas, City Attorney

RE: Lakewood Road Eucalyptus Trees

This memorandum has been prepared for use in connection with the letter sent to John Davis from the property owners at 153 and 157 Cragmont Drive about the condition of eucalyptus trees along Lakewood Road. Scott Wikstrom has done a yeoman's work retrieving the property records in this area. They disclose a situation that is not your typical subdivision situation.

Subdivision maps were not used to create the lots on the south side of Lakewood Road or Lakewood Road itself in this area. In 1951 a 40-foot road was dedicated by deed to the County over the northeasterly portion of the lots that are now 125 and 145 Lakewood Road. These two lots were also created by deeds based on a 1911 map. The two eucalyptus trees appear to be within the roadway easement (Lakewood Road) on these two parcels (the homes are located on the south side of the roadbed, the trees on the north side of the roadbed; the city limits in this area is the northeasterly boundary of Lakewood Road).

For trees located in a street right of way the courts have held: "The owner of the fee of the soil has a limited, not an unlimited, right of property in the trees. The public, upon the other hand, has a limited, and not unlimited, property right in the trees." *Ruff v. Hiveley* (1928) 94 Cal.App.667, 672. The courts have also held that between the city and the private property owner, the party who has the obligation to maintain the tree has the responsibility for damage done by the tree. *Jones v. Deeter* (1984) 152 Cal.App.3d 798, 805. The courts have also stated that the city has the right to decide, between the city and the private property owner, who will maintain these trees and therefore who is liable for damages done by these trees. *Jones v. Deeter* at 806.

In 1977, undoubtedly on the heels of the passage of Proposition 13, the City Council adopted a policy requiring private property owners to maintain street trees. This policy provides:

"In the interest of economy as well as providing residential property owners additional options on street tree planting, the Council has adopted a policy not to maintain street trees in residential areas of the City.

"The City will provide the property owner with the option to plant such a street tree, selected from a list maintained by the City, and plant such tree within the designated front yard in a manner compatible with individual property landscaping plans. It will be the responsibility of property owners to install and maintain said street tree or trees in a manner to assure their continued good care.

"The Council established a limited purpose street tree maintenance fund (maximum \$4,000 annually) from which expenditures may be authorized for maintenance of designated trees to include those which have been recognized as heritage tree or specimen trees that have a significant impact on the neighborhood. Money can be expended from this fund also for trees on property belonging to person unable to provide necessary treatment as a result of owner physical or financial limitations which constitute a hardship. Staff has been instructed to establish more specific standards as to what constitutes hardship for the administration of this element of the policy." City Council Policy 77-2, May 11, 1977.

In 1986 the City Council adopted a limited exception to the property owner's obligation to maintain street trees and for responsibility for tree damage for those street trees planted or required to be planted by the City. In Ordinance No. 1643 the Council made the City responsible for sidewalk damage done by these street trees and for trimming of these trees for the movement of pedestrians and vehicles. All maintenance and other trimming of the trees remained the responsibility of the property owner.

To summarize, the trees are located within the right of way of Lakewood Road on land that is owned by the owners of 125 and 145 Lakewood Road. The City policy has been for the last 28 years that the private property owners maintain street trees located on their property. As the letter indicates, John has had the City remove trees in this area in the past, as I understand it at the direction of the Public Services Director. I suspect this was as a result of the Public Services Director invoking a "hardship" standard, although I have never seen a written staff document setting forth the specific standards for a hardship as envisioned by the 1977 Council policy.

cc: Scott Wikstrom