

The Oregonian

Protected trees can be cut down in Portland -- for \$1,000

By Brad Schmidt

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Shortly after Christmas, one of the most celebrated and protected trees in Portland toppled to the ground, cut down by a mystery outlaw atop a hillside offering panoramic views of downtown.

In a city chock-full of tree-hugging activists, virtually no one made a sound.

Heritage Tree No. 255 was an *Abies grandis* – better known as a grand fir – and it stood 100 feet tall on an undeveloped lot nestled between million-dollar homes in an exclusive Northwest Portland neighborhood. It had been among more than 300 trees citywide given a special designation by the City Council supposedly safeguarding it from being axed.

In truth, though, the tree received less protection than others.

The felling of the grand fir is now exposing deep flaws in Portland's controversial tree code. Prompted by protests in neighborhoods such as Eastmoreland, city leaders in April beefed up rules hoping to better protect big trees standing in the path of new housing.

Cutting down a single tree 36 inches in diameter – even a tree lacking city protections – now costs a housing developer \$300 an inch, or at least \$10,800 per tree.

But the penalty imposed by Portland for cutting down a designated Heritage Tree on private property? Just \$1,000.

City leaders have done little to highlight the discrepancy. The unauthorized chopping of a Heritage Tree – a first, apparently, in Portland – was but a footnote in a City Council document from May stating a tree had been "removed." Officials didn't publicly volunteer details until asked by Mayor Charlie Hales and then spent just 90 seconds of an 11-minute presentation discussing the situation.

The Oregonian/OregonLive had been looking into the cutting since before that presentation. Commissioner Amanda Fritz, who oversees Portland Parks & Recreation and tree protections, acknowledged challenges during an interview this week. But Fritz said she worried publishing a story about the city's problems could lead to more cutting and scolded the news organization for being "irresponsible."

"It is clearly something that needs to be fixed," Fritz said of the tree-cutting fine.

'I didn't cut down the tree'

Clark Binkley swears he and his wife, Gail Neuburg, have no idea who cut down their Heritage Tree.

They were out of town for the holidays when it happened. They returned home in the wee hours Dec. 28 to find the tree had been axed.

"I didn't cut down the tree," Binkley told The Oregonian/OregonLive. "Somebody cut down the tree and I ended up paying the fine. And that's ridiculous."

Binkley and Neuburg bought their West Hills property along Northwest Maywood Drive in 2013 for \$1.8 million. Binkley is the chief investment officer and managing director of GreenWood Resources, a timber harvesting company. Neuburg is executive managing director of the Portland branch of ARA Newmark, a real estate investment advisory firm.

Binkley and Neuburg fell in love with the home's view – their 3,500-square-foot colonial overlooks downtown and includes an adjacent 1.5 acres of hillside above the Hilltop Condominiums, just north of West Burnside Street.

The Heritage Tree had been part of their neighboring property. It didn't block their view, although Binkley said he suspects it may have blocked the view of some neighbors.

Binkley said he and Neuburg didn't know the tree was protected when they bought their property from Jim Declusin, the former chief executive officer for Oregon Steel Mills, who died last month. Declusin's wife, Maria, submitted paperwork to protect the tree in September 2003, records show.

Although that designation was supposed to be documented on the property deed, it wasn't. Binkley said the tree didn't have a plaque, either.

It wasn't until last year, Binkley said, that he and his wife discovered the tree's protected status while randomly searching their address on the internet.

Public records reveal someone else began asking the city of Portland about that Heritage Tree last year, too.

A woman using a gmail account requested documentation in May about the tree's designation. Then, in October, she followed up to ask who was responsible for recording the tree with Multnomah County – the city or the property owner.

An internet search by The Oregonian/OregonLive quickly revealed that the woman works for Neuburg.

Binkley confirmed that Neuburg asked an employee to research the situation. Binkley said he wanted the information because he planned to complain to the Declusins about not disclosing the tree's protection. Maria Declusin didn't respond to a request for comment.

Binkley declined to disclose if he received any compensation from the Declusins as a result of his complaint, saying it was a private matter.

Two months later, the tree mysteriously got chopped down.

Because it was behind a locked, chain-link fence, Binkley said, he doesn't know what more could have been done to protect it. He reported the incident to Portland on Dec. 30, noting that someone had cut down a "large tree" on his land.

Binkley said he and his wife have no plans to develop or sell their property. He has "no idea" if it's worth more or less with the Heritage Tree gone.

Asked why someone would cut down the tree, Binkley said: "I think somebody did it because they wanted a better view."

Does that mean Binkley thinks one of his neighbors is responsible?

"It would be pure speculation who did it," he said. "All I know is I'm the guy who ended up paying."

'Out of whack'

Portland began its Heritage Tree program in 1993 to recognize trees that are of "special importance" to the city because of their age, size, type, historical association or horticultural value.

More than 325 trees have been designated over the years, with about 30 ultimately removed from the list – usually because the tree died or failed. Decommissioning a tree requires majority support from the city's volunteer Urban Forestry Commission and approval by the City Council.

Only one grand fir had been designated a Heritage Tree. Now it's gone.

In the end, city officials say, it's irrelevant who cut down that tree.

No matter intent, city code spells out the penalty. The maximum fine Portland can impose for cutting down a Heritage Tree on private property is \$1,000, said Jenn Cairo, the city forester.

But that's not what members of the Urban Forestry Commission were told earlier this year. According to meeting minutes, Binkley and Neuburg were facing a \$1,000 fine plus mitigation fees of \$300 per inch, or \$7,350 total, for their 24.5-inch diameter tree.

Cairo said the minutes or meeting information were inaccurate.

"We levied the maximum penalty that we could under the city's code," she said.

According to city rules approved by the City Council, that \$1,000 fine is plenty.

"Enforcement actions ... are established to be effective deterrents for egregious or willing misconduct and are intended to escalate for the severity or repeated nature of the violation," city rules state.

Asked if \$1,000 is an effective deterrent, Cairo demurred.

"We don't really know," she said. "We've had a lot of concern about this since this violation."

Parks officials did require Binkley to plant new trees totaling at least 24.5 inches in diameter. Binkley said he did. Parks officials assume that happened. But they haven't inspected the property and couldn't provide details, two months after closing out the case.

Parks officials also acknowledge another problem.

The tree cutting occurred in a special environmental protection zone. Under city rules, the Bureau of Development Services was supposed to be notified and could seek penalties or other

enforcement action. But parks officials didn't do so until after The Oregonian/OregonLive pointed out the city's own rules.

In response, officials again decided the \$1,000 fine was sufficient, according to Portland Parks & Recreation.

At least one homebuilder ridiculed the city's oversight.

Jeff Fish already dislikes the new \$300-per-inch fees that developers must pay when removing large trees while building homes. He said the City Council is reactionary and can't believe they've approved a system that allows someone to cut down a Heritage Tree for \$1,000, yet housing developers must pay upwards of \$10,800 for each large tree they take down.

"I think that's self evident," he said of the discrepancy. "The people we've got in office in the city of Portland aren't the brightest people in the world, and you can quote me."

Cairo acknowledged the inconsistency.

"I would say yes," she said, "that is out of whack."

Meryl Redisch, a member of the Urban Forestry Commission, said she hopes the City Council will approve new penalties for cutting down a Heritage Tree. But, she concedes, that may not happen for 18 months or longer.

"We have to make sure that something like this doesn't happen again," she said. "To have a \$1,000 fine on a tree of that size, it's a travesty."

Correction: An earlier version of this story incorrectly identified Binkley's title.

The Daily Journal of Commerce

Contractor's bid for city project is far above estimate

By Garrett Andrews

July 8, 2016

The Portland City Council on Wednesday agreed to accept a bid far higher than the original estimate to repair and seismically upgrade a leaky 911 call center. Officials say the current construction boom is to blame.

Skyward Construction of Ridgefield, Wash., bid \$2.78 million – \$693,000 more than the city estimated – to upgrade the Portland Communications Center. It was the only firm to bid.

The complicated upgrade will involve fixing the facility's roof and envelope without impeding emergency operations. The city's project manager, Sharon Raymor, surmised that with all the work happening around Portland, contractors that regularly work with the city could afford to sit this project out.

“Because it’s a 24-7 operation that’s going to remain fully occupied during construction, there is a lot of risk,” she said. “Essentially, it was that there were more opportunities elsewhere that weren’t as complex.”

During a hearing Wednesday to accept the bid, Commissioner Nick Fish asked Raymor why the project wasn’t put back out to bid. She replied that because the project involves methods potentially disruptive to 911 operators, much of the work will be done during the hours of lowest call volume – 2 to 6 a.m. Monday through Thursday.

“I think having to account for work during a very odd-hour swing shift is helping drive the cost up,” she said.

Raymor said that despite the high bid, the cost is still under budget. The project is being paid for with money from the Major Maintenance and Asset Replacement Fund.

“With this specific project, I don’t know that we could package it any other way, because of the nature of the facility,” she said. “It’s a critical facility.”

Skyward project manager Glenn Taggart said the firm hopes to begin construction Aug. 1 and finish in six months.

“It’s going to be a tough one,” he told the DJC. “The hardest part is probably going to be the seismic stuff on the inside.”

The city isn’t the only entity having trouble finding qualified crews. Taggart said securing specialized subcontractors hasn’t been easy.

Fish brought up that during the Great Recession, firms bid on projects outside their comfort zones in part to keep their crews busy. This led to lower costs for public projects.

“They were undercutting the market because they had fixed costs, and so they wanted the work,” he said. “Are we at risk of the reverse now? Because there’s so much activity in our community, we’re getting fewer bids and people are bidding at a premium? Is it a double-whammy for us?”

Taggart was Skyward’s estimator for the project.

“We’ve done a lot of these kinds of projects, and I’d say we’re pretty much experts at them and what they cost,” he said. “And when we were bidding it, we thought we were fully competitive.”

Skyward intends to self-perform \$2.45 million of the contract amount and dedicate 9.3 percent of the total bid – \$260,000 – to minority-owned or women-owned subcontractors.

Commissioner Steve Novick said replacing the facility’s roof has been a high priority for the Bureau of Emergency Communications for several years. Employees have had to rig buckets and tubing to prevent water from leaking onto electronics when snow accumulates on the roof.

“There’s a constant fear that that system will fail, and it sends a terrible message to our hard-working call-takers and dispatchers who have to navigate around buckets when they come to work,” he said.