

EXPEDITE
 Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

DEBBIE SULLIVAN, in her capacity of Mayor
of Tumwater,

Defendant.

NO. 24-2-01895-34

DECLARATION OF KEVIN
MCFARLAND

Kevin McFarland hereby states and declares as follows;

1. I am over the age of 18, am competent to testify herein and make this declaration on personal knowledge. I am a consulting urban forester and the contracted City of Tumwater Tree Protection Professional. I have worked with the City of Tumwater on urban tree issues for 27 years, including overseeing care of the Davis-Meeker Garry Oak tree that is the subject of this matter.

2. I am an International Society of Arboriculture certified Arborist and Tree Risk Assessment Qualified to conduct tree risk assessments. In this matter, I led a team of arborists to assess the condition of the Davis-Meeker Garry Oak which is located adjacent to Old Highway 99 by the Tumwater Airport. My team used state of the art techniques to evaluate the condition of the tree and form recommendations and options. As the leader of the team, it was my responsibility to prepare the final recommendations and report based on all the information gathered in our advanced risk assessment.

1 3. I have briefly reviewed the declaration provided by Beowulf Brower in this matter. As a
2 preliminary matter, he does not state the basis for his opinions or identify the type of examination, if any,
3 that he has made of the Davis-Meeker Garry Oak. His declaration appears to be based solely upon review
4 of my report. As my report describes, I conducted a Level 3 advanced assessment, which is more detailed
5 and thorough and produces more reliable information about the health and condition of the tree being
6 evaluated. The methodologies I used are described in my report to the City, which is included as Exhibit
7 1 to the Declaration of Debbie Sullivan. Mr. Brower does not say how he reached his conclusions or what
8 his “opinions” are based upon.
9

10 4. Mr. Brower describes a “mistake” in the risk rating matrices in my original report. In
11 preparation for my second attendance of the Tumwater Historical Committee meeting on April 18, 2024,
12 I discovered an error had occurred in the transfer of my field data to the final report. The incorrect
13 “Likelihood of Failure for Condition Numbers 1 & 2” within the Risk Categorization Table were selected.
14 This is found on Page 2 of the Attachment 1, ISA Basic Tree Risk Assessment Form. The levels of failure
15 should have read “Probable” rather than “Possible”. These errors were corrected and an amended report
16 along with a memo addressed to Mayor Sullivan were sent to Lisa Parks, the City Administrator via email
17 on May 10, 2024. That is the report provided to the Court by Mayor Sullivan. These changes have no
18 effect on my final risk rating which remains “High”.
19

20 5. During one of my on-site assessments of the tree, I met with a representative from the WA
21 State Patrol Aviation Division, from the nearby hanger at 7525 Old Hwy 99 Sw. He informed me that a
22 large branch had failed prior to my visit and that this had required himself and others to remove sections
23 of the failed branch from within the southbound lane of Hwy 99, adjacent to the tree.
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25
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1 6. In paragraph 7 of his declaration, Mr. Brower describes his risk assessment, without
2 providing the basis. It is apparently based on photographs from my report. Looking at photos is not a
3 dependable method in determining evidence for the potential of failure onto targets. The angles of photos
4 can greatly distort the reality of where a branch can fall. Branches from this tree have fallen onto Hwy 99
5 and potential targets are precisely what was addressed in my assessment and report. Mr. Brower fails to
6 explain what he believes was a misrepresentation. Thus, the statement that I misrepresented both the
7 nature and required frequency of advanced assessments is unwarranted.
8

9 7. Mr. Brower's description of the City's arborist team's recommendations is incorrect. Mr.
10 Brower is mistaken that I merely stood at the base of the tree and listened for tonal differences produced
11 by the climbing arborist hitting the tree with a mallet. I utilized the climbing arborist to visually inspect
12 the locations of the recent scaffold branch failures along with use a probing tool and a mallet for sounding.
13 Sounding is an acceptable method of assessment and is currently defined within the ISA Tree Risk
14 Assessment manual as the "process of striking a tree with a mallet or other appropriate tool and listening
15 for tones that indicate dead bark, a thin layer of wood outside a cavity or cracks in wood". I instructed the
16 climbing arborist to inspect different areas throughout the canopy who then provided me with verbal
17 findings of the inspection which included the results of the soundings. Amanda Hancock, the climbing
18 arborist, is an ISA Certified Arborist and Tree Risk Assessment Qualified. She has significant experience
19 with oak tree assessments. Furthermore, the soundings were not used solely as the basis for my
20 recommendation for removal. Rather they prompted further testing, precisely as Mr. Brower states should
21 happen.
22

24 8. It is my understanding that Ray Gleason nor Neil Wolbert are currently ISA Certified Arborists
25 or Tree Risk Assessment Qualified. To my knowledge, they have not nor are they qualified to perform a risk
26

1 assessment of this tree or provide an educated opinion. Along with Rob Lloyd, Mr. Wolbert did respond to a
2 wood decaying pathogen that caused root rot in the late 1990s. Indeed, I had initially identified this pathogen,
3 prescribed the necessary mitigation and the City called them in to help implement it. However, their efforts in
4 late 1990s would not be relevant to the condition of the tree in 2024, some 25 years later. My job was to assess
5 the current condition of the tree and make recommendations based on its current condition.

6
7 9. My recommendations in my report to the City, including the recommendation for removal of
8 the Davis-Meeker Garry Oak, were based solely on my professional evaluation of the tree and the best scientific
9 information available as to the risks that the tree will have additional failures of major limbs and stems. Given
10 my history of caring for this tree for 27 years, it is a difficult recommendation to make and I am sad that this
11 tree has come to the end of its life span. My opinions and recommendations were not based on or influenced
12 by legal opinions or insurance adjusters who played no role in forming my report.

13 **I make this declaration under penalty of perjury under the laws of the State of**
14 **Washington.**

15 Dated this 29th day of May 2024 at Tumwater, Washington.

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18 _____
19 Kevin McFarland