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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NO. 58881-1-II

SAVE THE DAVIS-MEEKR GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her capacity of Mayor of Tumwater,

Respondent.

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
ASSIGNMENTS OF ERROR	3
ISSUES PRESENTED	3
OVERVIEW OF THE CASE	4
A. The historic Davis Meeker oak is a trail marker on an ancient Native American trade route.	4
B. After the tree dropped a branch in May 2023, the city’s arborist performed a deeply flawed risk assessment.	7
C. The city’s Historic Preservation Ordinance puts the Historic Preservation Commission in charge.	9
D. Washington’s Archaeological Sites and Resources Law adds another layer of protection for historic sites if they are also archaeological resources.	11
E. The trial court decided the merits of the case.....	14
F. The present appeal.	17
STANDARD OF REVIEW	19
ARGUMENT	20
A. Under the city’s Historic Preservation Ordinance, the mayor may not cut down the tree without prior approval of the Tumwater Historic Preservation Commission. ..	20

B. As determined by DAHP, the mayor may not cut down
the tree without obtaining a permit from DAHP..... 26

CONCLUSION 32

CERTIFICATE OF COMPLIANCE 33

APPENDIX A 34

TABLE OF AUTHORITIES

Cases

<i>Schofield v. Spokane Cnty.</i> , 96 Wn. App. 581, 980 P.2d 277 (1999).....	27
<i>Schroeder v. Excelsior Mgmt. Grp., LLC</i> , 117 Wn.2d 94, 297 P.3d 677 (2013).....	19
<i>Sheats v. City of E. Wenatchee</i> , 6 Wn. App. 523, 431 P.3d 489 (2018).....	19

Statutes

chapter 27.53 RCW	passim
RCW 27.53	13
RCW 27.53.030	12, 29
RCW 27.53.030(2)	12, 27, 28, 29
RCW 27.53.030(9)	12, 29
RCW 27.53.060(1)	passim
WAC 25-48	13

Rules

RAP 18.17(b).....	33
RAP 2.2(a)(3)	19
RAP 8.1(B)(2)	18

RAP 8.3 18

Ordinances

chapter 2.62 of the Tumwater Municipal Code 1, 3, 9

TMC 2.62.010 9

TMC 2.62.030 24, 25

TMC 2.62.030(K)..... 25

TMC 2.62.030(L) 21

TMC 2.62.030(T) 22

TMC 2.62.030(W)..... 23

TMC 2.62.040(D)..... 10

TMC 2.62.050 22

TMC 2.62.060 32

TMC 2.62.060(A)..... 10, 20, 26

TMC 2.62.060(B)..... 24

TMC 2.62.060(C)(3) 10, 11

TMC 2.62.060(C)(4) 11

Other Authorities

Angus Stevenson (ed.), *Oxford Dictionary of English*, 3rd
Edition (Oxford: Oxford University Press, 2010) 28

Black’s Law Dictionary (12th ed. 2024)..... 21

City of Tumwater, Davis Meeker Garry Oak Tree FAQs,
<https://www.ci.tumwater.wa.us/government/city-council-meetings/davis-meeker-garry-oak-tree-faqs>..... 31

Hill, Gerald N. and Kathleen Hill. *Nolo's Plain-English Law Dictionary*. Berkeley, CA, Nolo, 2009 29

Mikkelsen, Drew. “400-year-old oak tree on Tumwater historical registry could soon be history itself.” King 5, Seattle, May 16, 2024,
<https://www.king5.com/article/news/local/mayor-safety-behind-decision-cut-down-400-year-old-tree/281-ead8109e-1d11-4cd3-ba86-8a872a85ca5a>..... 31

See National Park Service’s National Register of Historic Places criteria,
<https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>. 30

INTRODUCTION

Debbie Sullivan, the mayor of the City of Tumwater, plans to have a 400-year-old Oregon white oak tree known as the Davis Meeker oak cut down. This tree is listed as an historic property on the City of Tumwater’s Register of Historic Places. Under the plain language of the City’s Historic Preservation Ordinance—chapter 2.62 of the Tumwater Municipal Code (“TMC”)—the tree may not lawfully be cut down or otherwise destroyed without prior review and approval by the Tumwater Historic Preservation Commission. Similarly, because the tree is also an archaeological site, it may not be cut down or destroyed under state law without prior review and approval by the Washington Department of Archaeology & Historic Preservation (“DAHP”). To date, neither the Tumwater Historic Preservation Commission nor DAHP has authorized the tree to be cut down.

On May 31, 2024, the Honorable Anne Egeler of the Thurston County Superior Court declined to grant an injunction and dissolved a temporary restraining order, opening the door to

the mayor ordering the tree cut down immediately. In rendering her decision, Judge Egeler concluded that the law allows the mayor to have the tree cut down without obtaining approval of the Tumwater Historic Preservation Commission or DAHP.

Appellant Save the Davis-Meeker Garry Oak (“SDMGO”)—a coalition of individuals with deep personal, emotional, and cultural attachments to the Davis Meeker oak—asks this Court for declaratory and injunctive relief. Specifically, SDMGO asks this Court to: (1) reverse the superior court; (2) declare that the mayor’s decision to have the historic Davis Meeker oak cut down violates Tumwater Historic Preservation Ordinance and Washington’s Archaeological Sites and Resources Law, chapter 27.53 RCW; and (3) enjoin the mayor from having the tree cut down without first obtaining approval of the city’s Historic Preservation Commission and DAHP under the above-referenced laws.

ASSIGNMENTS OF ERROR

1. The superior court erred by dissolving the temporary restraining order and declining to enjoin the mayor from having the Davis Meeker oak cut down after wrongfully concluding that the tree is not protected by the city's Historic Preservation Ordinance despite the tree being on the City of Tumwater's Register of Historic Places. CP 14.

2. The superior court erred in holding as a matter of law that trees can never be archaeological resources within the meaning of Washington's Archaeological Sites and Resources Law and that therefore the Davis Meeker oak is not protected by that law.

ISSUES PRESENTED

1. Tumwater's Historic Preservation Ordinance—chapter 2.62 of the Tumwater Municipal Code—provides that a property owner must first obtain the approval of the Tumwater Historic Preservation Commission before altering or demolishing any “property” listed on the city's Register of

Historic Places. The Davis Meeker oak is a property listed on the city's historic register. Does the city's Historic Preservation Ordinance require that the mayor obtain the approval of the Historic Preservation Commission before having the tree cut down?

2. Washington's Archaeological Sites & Resources Law—chapter 27.53 RCW—provides that one must obtain a permit from DAHP before altering, defacing, or destroying an “archaeological resource,” or removing an “archaeological object.” DAHP has determined that the Davis Meeker oak is an archaeological resource or object and that a permit under chapter 27.53 RCW is required before the tree is cut down. Is the mayor required to obtain a permit from DAHP before having the tree cut down?

OVERVIEW OF THE CASE

A. The historic Davis Meeker oak is a trail marker on an ancient Native American trade route.

Next to Olympia Airport in the City of Tumwater stands a

400-year-old Oregon white oak (“Garry” oak) known as the Davis Meeker oak. The tree is formally listed on the Tumwater Register of Historic Places, having been a landmark on the Cowlitz Trail for centuries, and later the Oregon Trail. CP 16; CP 73.

The Cowlitz Trail is part of an ancient water and land transportation route used by Indigenous peoples since time immemorial. CP 73. The tree is situated on the original Cowlitz Prairie, which extended from Vancouver to Puget Sound. CP 104. In this area, Garry oaks were cultivated by native peoples for thousands of years through regular burning of the prairies, limiting the growth of other trees and allowing the oaks to survive. *Id.*

As explained in the declaration of Laura Young, an archivist and founding board member of the Squaxin Museum Library and Research Center, this particular tree was likely physically modified by Indigenous peoples to serve as a trail marker and is likely a Native American burial marker. Decl. of

Laura Young in Support of Mot. for Injunctive Relief Pursuant to RAP 8.3, ¶¶ 12–13 (filed July 2, 2024). In addition, “camas, wild carrots, [and] onions were harvested at this ancient site, with the tree providing shade as a resting place after Tribal people finished a day of gathering and harvesting the gifts of the land.” *Id.*, ¶ 9.

The tree is historically and culturally significant for its place in the tragic story of violence toward Indigenous peoples in our region. “This tree is known as one of the few territorial trees in the area used to hang Indigenous People as a method of forced property eviction before and during the regional Indian War of 1855–1856. After settlers arrived, vigilantes used it to hang Native Americans from one of its branches.” *Id.*, ¶ 4. The branch used for these vigilante hangings broke off in an ice storm in the 1990s, but “the massive healed-over scar from where it broke off can still be seen today.” CP 72.

As described by Bill Iyall, who was recently re-elected as chairman of the Cowlitz Tribe, “[t]he meeker oak is a fixture in

our community.” CP 104. Among countless stories, SDMGO member Stewart Hartman, who has lived in Tumwater all his life, recalled, “I remember my father and grandfather taking me to the tree when I was a boy—they told me how it was used as a hanging tree. That’s where the Oregon Trail came through that ended by the brewery,” and “[o]ver the years, my family and I had meetings over many issues under the old Oak tree. It was a nice shady place to park and have conversations.” CP 78. Mr. Hartman concludes, “[t]he loss of the Old Oak tree at Olympia Airport to me personally would be like losing an old friend that I have known all my life.” CP 77.

B. After the tree dropped a branch in May 2023, the city’s arborist performed a deeply flawed risk assessment.

In May 2023, a limb fell from the tree, and the tips on the limb “barely crossed the fog line on the west side of the road,” which was Old Highway 99. CP 80. The city’s arborist later recommended that the tree be cut down. But the recommendation

was riddled with errors, omissions, and misrepresentations. CP 79–81.

The mayor’s office put out false statements (and claimed in briefing to this Court) that a “team of arborists” had recommended removing the tree. CP 81, 83; Response to Motion for Injunctive Relief Pursuant to RAP 8.3, at 2 (filed July 15, 2024). In reality, the city arborist was the only one to make that recommendation. CP 41 (“I am recommending removal.”).

During the risk assessment process, the city’s arborist asked another company, Tree Solutions, to conduct sonic tomography to assess the extent of decay at the base of the tree. CP 48. That testing found that the tree had slightly more than enough healthy wood to retain the tree. *Id.*

After the city arborist’s final report contradicted this by recommending removal, the owner of Tree Solutions wrote to the city to say that the report was “an embarrassment to all knowledgeable arborists.” Supp. Decl. of Ronda Larson Kramer

in Support of Mot. for Injunctive Relief Pursuant to RAP 8.3, at Exhibit B, at 2 (filed July 18, 2024).

C. The city’s Historic Preservation Ordinance puts the Historic Preservation Commission in charge.

The official listing of the Davis Meeker oak on the City of Tumwater’s Register of Historic Places triggers the protections of the city’s Historic Preservation Ordinance. The ordinance is codified at chapter 2.62 of the Tumwater Municipal Code, a true and correct copy of which is attached hereto in Appendix A.

The purpose of the city’s Historic Preservation Ordinance is to “provide for the identification, evaluation, and protection of historic resources within Tumwater.” TMC 2.62.010. The ordinance is administered by a seven-member body known as the Tumwater Historic Preservation Commission. “The major responsibility of the historic preservation commission is to identify and actively encourage the conservation of the city’s historic resources by initiating and maintaining a register of historic places and reviewing proposed changes to register

properties; to raise community awareness of the city’s history and historic resources; and to serve as the city’s primary resource in matters of history, historic planning, and preservation.” TMC 2.62.040(D).

The commission is tasked with reviewing proposed actions that could damage or destroy any property listed on the Tumwater Register of Historic Places. Under the Historic Preservation Ordinance, no person may alter, damage, or destroy a property listed on the register without first obtaining a “certificate of appropriateness” from the commission, or, in the case of demolition, a “waiver” of the certificate requirement (also issued by the commission). As stated at TMC 2.62.060(A):

No person shall . . . alter, restore, remodel, repair, move, or demolish any existing property on the Tumwater register of historic places . . . without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review.

TMC 2.62.060(A).

When a property owner desires to demolish a property listed on the city’s historic register, TMC 2.62.060(C)(3) outlines

the mandatory “waiver” process referenced above. In that process, the owner must first meet with the Historic Preservation Commission and attempt to find less destructive alternatives. The commission may attach conditions of approval or require mitigation and has discretion to allow or prohibit the proposed demolition from occurring. TMC 2.62.060(C)(3).

Decisions by the Tumwater Historic Preservation Commission to grant, deny, or waive a requested certificate of appropriateness are appealable to the city’s hearing examiner. TMC 2.62.060(C)(4). In turn, “the hearing examiner’s decision regarding an approval, denial, or waiver of a certificate of appropriateness may be appealed to superior court.” *Id.*

D. Washington’s Archaeological Sites and Resources Law adds another layer of protection for historic sites if they are also archaeological resources.

In addition to the city’s own Historic Preservation Ordinance, the historic and cultural significance of the Davis Meeker oak triggers the protections of Washington’s Archaeological Sites and Resources Law at chapter 27.53 RCW.

Under that law, prior to undertaking any action that might damage a “historic archaeological resource,” a person must obtain a written permit from DAHP. RCW 27.53.060(1) provides:

On the private and public lands of this state it shall be unlawful for any person . . . to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, . . . without having obtained a written permit from the director [of DAHP] for such activities.

RCW 27.53.060(1).

RCW 27.53.030 defines “historic archaeological resource” to mean “those properties which are listed in or eligible for listing in . . . the national register of historic places as defined in the national historic preservation act of 1966.” RCW 27.53.030(9). That law further defines “[a]rchaeological object” to mean “an object that comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities,

and technological by-products.” RCW 27.53.030(2).

In this case, the Washington Department of Archeology & Historic Preservation has concluded the Davis Meeker oak likely qualifies for listing on the national register and therefore may not be cut down without a written permit issued pursuant to RCW 27.53.060(1). In DAHP’s words:

The Davis Meeker Garry Oak Tree is a registered historic property on the City of Tumwater Historical Register, that based on published accounts is a historic feature associated with the Cowlitz Trail and subsequent Oregon Trail. Based on this association it is likely that this resource is eligible for the National Register of Historic Places. . . .

Therefore, there are archaeological requirements, necessary prior to the removal or alteration of the Davis-Meeker Garry Oak Tree.

Specific information about Washington State Archaeological Excavation and Removal Permits can be found in RCW 27.53 and WAC 25-48. Knowing and willful failure to obtain this permit or comply with its requirement is a misdemeanor and may result in civil penalties of not more than five thousand dollars per violation, reasonable investigative costs, and site restoration costs.

CP 140 (emphasis in original).

E. The trial court decided the merits of the case.

On May 24, 2024, Appellant Save the Davis-Meeker Garry Oak filed a complaint for declaratory and injunctive relief and a request for a temporary restraining order to stop the mayor of Tumwater from cutting down the Davis Meeker oak without permission from the Tumwater Historic Preservation Commission. CP 5–12. That same day, the Honorable Sharonda D. Amamilo granted the request for a TRO, providing that “Defendant shall immediately cease and desist from all efforts to remove the Davis Meeker Garry Oak until further court order.” CP 26–27.

The same day, the mayor moved to dissolve the TRO. CP 61–68. Shortly thereafter, on Tuesday, May 28, 2024, the newly assigned Judge Anne Egeler set a hearing on the mayor’s motion. Although it had by then been over a year since the branch had dropped, the court set the hearing for only three days out, to occur on May 31, 2024. CP 106.

On Tuesday, May 28, 2024, SDMGO filed a response to the mayor's motion to dissolve the TRO. SDMGO's response contained a cross motion to extend the TRO to July 30, 2024, because American kestrels were nesting in a cavity in the tree, and July 30 would give the chicks time to fledge. CP 95–101. The mayor filed her reply a day later on Wednesday, May 29, 2024. CP 123–130. The cross motions went to hearing before Judge Egeler that Friday, May 31, 2024.

At that hearing, counsel for the mayor spent the entirety of his opening argument alleging various procedural defects in Judge Amamilo's initial TRO (none of which were accepted by the court). He did not discuss the merits of SDGMO's claim that the mayor has no authority to cut the tree down.

However, in a portion of his one-minute rebuttal, counsel for the mayor made a very brief argument that the entirety of the city's Historic Preservation Ordinance does not apply to the Davis Meeker oak—despite the fact that the tree is listed on the city's Register of Historic Places. Counsel's only justification for

this position was a claim that a tree is not a “structure.” According to the mayor’s attorney: “The City’s ordinance does not apply because a tree is not a structure. And the City’s definition of structure applies to manmade constructs, not trees.”

CP 13

The mayor’s attorney also reported that the mayor was mobilizing to cut the tree down as soon as the following Monday, June 3, 2024. CP 7, 15.

Immediately following the mayor’s rebuttal argument, Judge Egeler dissolved the TRO and decided the merits of all SDMGO’s claims. She adopted the argument of the mayor’s counsel, holding definitively that “[t]here was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure, and the code allows removal of a tree the city determines is posing a hazard.” CP 154.

Judge Egeler also held that Washington’s Archaeological Sites and Resources Law at chapter 27.53 RCW did not apply because “[a] quick look at that statute reveals that that chapter of

the law addresses archaeological resources, not trees, and therefore is not applicable and it does not provide this court a basis for a finding of clear legal or equitable right.” CP 155.

However, because the mayor was mobilizing to have the tree cut down as soon as the following Monday, and because destruction of the tree would eliminate any possibility of redress, Judge Egeler extended the otherwise-dissolved TRO until Wednesday, June 5, 2024, in order to “provide sufficient time to allow the plaintiffs to make an emergency motion on appeal to the Court of Appeals.” CP 156.

F. The present appeal.

On May 31, 2024—the same day Judge Egeler dissolved the TRO—SDMGO filed the current appeal with the Court of Appeals.

On July 2, 2024, to stop the tree from being cut down, SDMGO filed a motion for injunctive relief pending resolution of this appeal. *See* Corrected Motion for Injunctive Relief Pursuant to RAP 8.3 (filed July 2, 2024). On July 15, 2024,

counsel for the mayor filed a response brief contesting SDMGO's request for an injunction on appeal and also arguing that Judge Egeler's order dissolving the TRO is not appealable. *See* Response to Motion for Injunctive Relief Pursuant to RAP 8.3 (filed July 15, 2024).

On July 23, 2024, Commissioner Aurora R. Bearse of the Court of Appeals issued an order resolving SDMGO's motion for an injunction on appeal under RAP 8.3. *See* Ruling Denying Stay Under RAP 8.3 Without Prejudice to Obtaining a Stay under RAP 8.1(B)(2), Determining Appealability, and Accelerating Appeal (filed July 23, 2024). In that Order, Commissioner Bearse concluded that rather than seeking a discretionary stay under RAP 8.3, SDMGO was entitled to a stay from the superior court by complying with the supersedeas bond rules (RAP 8.1(B)(2)) and that the superior court has the initial responsibility to consider supersedeas bond adequacy or determine what qualifies as an alternate form of security. *Id.* at 4–5 & n.5.

Commissioner Bearse also found that Judge Egeler's

decision was appealable under RAP 2.2(a)(3), as a decision “affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.” *Id.* at 6 (“Given that the superior court effectively determined the City’s right to remove the tree, and because it appears no other issues remain pending in the superior court, this court concludes this appeal may proceed under RAP 2.2(a)(3).”).

STANDARD OF REVIEW

This Court reviews orders dissolving a TRO for abuse of discretion. *Schroeder v. Excelsior Mgmt. Grp., LLC*, 117 Wn.2d 94, 103–04, 297 P.3d 677 (2013). However, even under that standard, questions of law are reviewed de novo. *Id.* See also *Sheats v. City of E. Wenatchee*, 6 Wn. App. 523, 539, 431 P.3d 489 (2018) (reviewing question of law under de novo standard of review in the context of reviewing an order denying a TRO).

In this appeal, SDMGO challenges two legal determinations made by Judge Egeler in her order dissolving the TRO: (a) her

determination that the mayor of the City of Tumwater may lawfully cut down the Davis Meeker oak without first obtaining the approval of the Tumwater Historic Preservation Commission; and (b) her determination that the mayor may cut the tree down without first obtaining the approval of DAHP. On both of these issues, the standard of review is the de novo standard for questions of law.

ARGUMENT

A. Under the city’s Historic Preservation Ordinance, the mayor may not cut down the tree without prior approval of the Tumwater Historic Preservation Commission.

The Davis Meeker oak is on the city’s historic register. Under the plain language of the city’s Historic Preservation Code, the tree cannot be cut down without prior approval of the Tumwater Historic Preservation Commission

As discussed above, TMC 2.62.060(A) provides unambiguously that “[n]o person shall . . . alter, restore, remodel, repair, move, or demolish *any existing property on the*

Tumwater register of historic places . . . without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review” (emphasis added). This prohibition applies to any “property” listed on the City of Tumwater’s Register of Historic Places.

In turn, TMC 2.62.030(L) defines “historic property” to mean “*real property* together with improvements thereon, except property listed in a register primarily for objects buried below ground[.]” TMC 2.62.030(L) (emphasis added). The classic definition of real property is “[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.” *Property*, Black’s Law Dictionary (12th ed. 2024). Thus, the city’s Historic Preservation Ordinance is not limited to protecting “structures,” as the mayor argued below. Rather, the ordinance protects any listed historic “real property.”

The city's Historic Preservation Ordinance is also intended to protect historic "sites." *See* TMC 2.62.050 (providing that "[a]ny building, structure, *site*, object, or district may be designated for inclusion on the Tumwater register of historic places") (emphasis added). The term "site" is defined as "a place where a significant event or pattern of events occurred," and may be "the symbolic focus of a significant event or pattern of events." TMC 2.62.030(T).

Here, the Davis Meeker oak is unquestionably a "property" listed on the City's Register of Historic Places. It is "real property." And it is an historic "site," having been a marker for Indigenous peoples on the historic Cowlitz Trail for hundreds of years, and later on the Oregon Trail by the first non-indigenous people to settle in the Tumwater area. For all these reasons, the tree is protected under the plain language of the city's Historic Preservation Ordinance. It cannot be altered or cut down without prior approval by the Tumwater Historic Preservation

Commission, either through the issuance of a certificate of appropriateness or a waiver of such a certificate.

Even if the city’s Historic Preservation Ordinance applied only to “structures,” the mayor would still need to obtain the approval of the Tumwater Historic Preservation Commission before cutting the tree down. This is because the tree is a structure. The city’s Historic Preservation Ordinance defines “structure” to mean “a work made up of interdependent and interrelated parts in a definite pattern of organization. *Generally constructed by man*, it is often an engineering project.” TMC 2.62.030(W) (emphasis added). The phrase “generally constructed by man” denotes that a structure can, in fact, be something that is not constructed by humans. The mayor’s own exhibits submitted to the superior court implicitly recognized this by using the term “structure” in relation to the tree. *See, e.g.*, CP 52 (“Causes a weak structure.”); CP 57 (“selectively pruned for improved structure”). The mayor’s attorney himself stated at the hearing that the tree presents “structural concerns” and is not

“structurally sound.” CP 65. By definition, only “structures” can have “structural” defects.

Finally, the code does contain exceptions, but those do not apply to the Davis Meeker oak. Under TMC 2.62.060(B), there are limited circumstances under which a property listed on the city’s Register of Historic Places may be altered without first obtaining the commission’s permission. Those limited exemptions are:

1. Ordinary repair and maintenance;
2. Painting as part of ordinary repair and maintenance that is consistent with the historic register designation report for the property;
3. Emergency measures defined in TMC 2.62.030;
and
4. Resurfacing of areas such as parking lots, trails, sidewalks, and streets with materials that are consistent with the historic register designation report for the property.

TMC 2.62.060(B) (emphasis added).

Applied here, cutting the tree down entirely is not “ordinary repair and maintenance.” It is not “painting” or

“resurfacing.” The only exemption that is even theoretically relevant is the third listed above, which references “emergency measures” defined in TMC 2.62.030.

However, the only emergency measures identified at TMC 2.62.030 are for “emergency repair,” defined as “work necessary to *prevent* destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.” TMC 2.62.030(K) (emphasis added). Here, it is plainly evident that the work contemplated by the mayor of Tumwater is not intended to *prevent* destruction or dilapidation of the Davis Meeker oak, but to *effectuate* and *carry out* that very destruction by cutting the tree down forever. That is not “repair” (emergency or otherwise) in any sense of the word, let alone under the city’s Historic Preservation Ordinance.

In sum, the Davis Meeker oak is a property listed on the city’s Register of Historic Places. The tree is real property. It is an historic site and also is a structure. The tree is, therefore,

protected by the city's Historic Preservation Ordinance. Under the plain language of TMC 2.62.060(A), the tree may not be altered or destroyed without prior approval by the Tumwater Historic Preservation Commission.

This Court should reverse the superior court's ruling and hold, consistent with the plain language of the law, that the Davis Meeker oak may not be altered, harmed, or destroyed absent prior approval by the Tumwater Historic Preservation Commission. This Court should enjoin the mayor from having the tree cut down until such approval is obtained.

B. As determined by DAHP, the mayor may not cut down the tree without obtaining a permit from DAHP.

The Washington Department of Archeology and Historic Preservation is the state agency charged with administering Washington's Archaeological Sites and Resources Law, and it has concluded that the Davis Meeker oak qualifies as a protected historic archaeological resource under that law. Thus, a permit from DAHP is required to cut down the tree.

DAHP rests its conclusion on the fact that the tree is “a historic feature associated with the Cowlitz Trail and subsequent Oregon Trail” and likely qualifies for listing on the National Register of Historic Places. CP 140. DAHP’s position is entitled to substantial deference. *See, e.g., Schofield v. Spokane Cnty.*, 96 Wn. App. 581, 587, 980 P.2d 277 (1999) (“deference should be given to an agency’s interpretation of the law where the agency has special expertise in dealing with such issues.”).

Under chapter 27.53 RCW, a written permit is required from DAHP prior to undertaking any action that might damage a “historic archaeological resource or site,” or that would “remove any archaeological object.” RCW 27.53.060(1).

The statute defines “archaeological object” as “an object that comprises the *physical evidence of an indigenous . . . culture*, including material remains of past human life, *including monuments*, symbols, tools, facilities, and technological by-products.” RCW 27.53.030(2) (emphasis added).

Garry oaks were cultivated by native peoples in this area

as an agricultural resource for thousands of years through planting of acorns and the regular burning of the prairies to prevent other trees from overtaking the oaks. CP 104. As a physical remnant of that ancient practice, the tree represents the “physical evidence of an indigenous” culture. Consequently, it is an archaeological object under the plain language of RCW 27.53.030(2).

In addition, it is an archaeological object because it was a trail marker for the indigenous Cowlitz Trail and the subsequent Oregon Trail, and therefore is a “monument.” The Oxford English Dictionary defines monument as “a building, structure, *or site* that is of historical importance or interest.” See Angus Stevenson (ed.), *Oxford Dictionary of English*, 3rd Edition (Oxford: Oxford University Press, 2010). Nolo defines “monument” as “A permanent landmark established to make it possible for surveyors to ascertain boundaries and create legal descriptions of real estate parcels. A monument can be a natural or an artificial object such as a metal marker, a river, *or a tree*”

(emphasis added). Hill, Gerald N. and Kathleen Hill. *Nolo's Plain-English Law Dictionary*. Berkeley, CA, Nolo, 2009. The Davis Meeker oak is of historical significance and therefore is a monument. Consequently, it is an archaeological object under RCW 27.53.030(2).

As to it being an “archaeological resource,” RCW 27.53.030 defines “historic archaeological resource” to mean “those properties which are listed in or eligible for listing in . . . the national register of historic places as defined in the national historic preservation act of 1966.” RCW 27.53.030(9). Thus, when a property is eligible for listing on the national register of historic places, it qualifies as a “historic archaeological resource” and may not be harmed without a permit from DAHP pursuant to RCW 27.53.060(1).

To be considered eligible on the national register, a property must meet the National Register Criteria for Evaluation. First, the property must be old and must still look much like it did in the past; second, it must have historical

significance, meaning that it is associated with events, **activities**, or developments that were important in the past. *See* National Park Service’s National Register of Historic Places criteria, <https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>.

The tree satisfies these criteria because it is both ancient and looks much like it did in the past and also is associated with activities that were important in the past: the Cowlitz Trail and then the Oregon Trail. The Oregon Trail involved the important activity of settling the Tumwater area. The Cowlitz Trail involved the important activity of traveling on the most important north-south indigenous trade route in the region. The tree stood next to the Cowlitz Trail for hundreds of years. CP 73. It was a trail marker. *See* Mikkelsen, Drew. “400-year-old oak tree on Tumwater historical registry could soon be history itself.” King 5, Seattle, May 16, 2024, <https://www.king5.com/article/news/local/mayor-safety-behind-decision-cut-down-400-year-old-tree/281-ead8109e->

1d11-4cd3-ba86-8a872a85ca5a. Even today the tree is a landmark. CP 77. The City's own website calls states that the Davis Meeker oak "has been a fixture in the community for at least 400 years and is a treasured landmark within many stories to tell." *See* City of Tumwater, Davis Meeker Garry Oak Tree FAQs, <https://www.ci.tumwater.wa.us/government/city-council-meetings/davis-meeker-garry-oak-tree-faqs>.

There is no statutory basis for exempting the Davis Meeker oak from the protections of Washington's Archaeological Sites and Resources Law on the simple basis that it is a tree. Additionally, DAHP's determination that the tree is protected by that law is entitled to substantial deference. Therefore, this Court should reverse the superior court's order and find that the tree may not be harmed, destroyed, or cut down without the City of Tumwater first obtaining a written permit from DAHP pursuant to RCW 27.53.060(1).

CONCLUSION

For the foregoing reasons, the Court should reverse the superior court and declare that the mayor's decision to remove the Davis Meeker oak without obtaining prior approval by the city's historic preservation commission or a permit from DAHP violates the city's own Historic Preservation Ordinance (TMC 2.62.060) and Washington's Archaeological Sites and Resources law at chapter 27.53 RCW. This Court should enjoin the mayor from cutting down the tree until such approvals are obtained.

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CERTIFICATE OF COMPLIANCE

We certify that this brief contains 5,114 words, in compliance with RAP 18.17(b)

Respectfully submitted this 30th day of August, 2024.

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APPENDIX A

Tumwater Municipal Code, Chapter 2.62—Historic Preservation Ordinance

From the City's online municipal code website at:

<https://www.codepublishing.com/WA/Tumwater/#!/Tumwater02/Tumwater0262.html#2.62>

Sections:

- 2.62.010 Purpose.
- 2.62.020 Short title.
- 2.62.030 Definitions.
- 2.62.040 Tumwater historic preservation commission.
- 2.62.050 Tumwater register of historic places.
- 2.62.060 Review of changes to Tumwater register of historic places properties.
- 2.62.070 Relationship to zoning.
- 2.62.080 Review and monitoring of properties for special property tax valuation.

2.62.010 Purpose.

The purpose of this chapter is to provide for the identification, evaluation, and protection of historic resources within Tumwater and preserve and rehabilitate eligible historic properties within the city for future generations through special valuation, a property tax incentive, as provided in Chapter 84.26 RCW in order to:

- A. Safeguard the heritage of Tumwater as represented by those buildings, districts, objects, sites and structures which reflect significant elements of the city's history;

- B. Foster civic and neighborhood pride in the beauty and accomplishments of the past, and a sense of identity based on the city's history;
- C. Stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects;
- D. Assist, encourage and provide incentives to private owners for preservation, restoration, redevelopment and use of outstanding historic buildings, district, objects, sites and structures;
- E. Promote and facilitate the early identification and resolution of conflicts between preservation of historic resources and alternative land uses; and
- F. Conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

(Ord. 1400, Added, 10/19/1993)

2.62.020 Short title.

This chapter shall be known and may be cited as the "historic preservation ordinance" of the city of Tumwater.

(Ord. 1400, Added, 10/19/1993)

2.62.030 Definitions.

The following words and terms when used in this chapter shall mean as follows, unless a different meaning clearly appears from the context:

- A. “Tumwater historic inventory” or “inventory” means the comprehensive inventory of historic resources within the boundaries of the city.
- B. “Tumwater historic preservation commission” or “commission” means the commission created by TMC 2.62.040.
- C. “Tumwater register of historic places,” “local register,” or “register” means the local listing of properties provided for in TMC 2.62.050.
- D. “Actual cost of rehabilitation” means costs incurred within twenty-four months prior to the date of application and directly resulting from one or more of the following: (1) improvements to an existing building located on or within the perimeters of the original structure; or (2) improvements outside of but directly attached to the original structure which are necessary to make the building fully usable but shall not include rentable/habitable floor space attributable to new construction; or (3) architectural and engineering services attributable to the design of the improvements; or (4) all costs defined as “qualified rehabilitation expenditures” for purposes of the federal historic preservation investment tax credit.
- E. A “building” is a structure constructed by human beings. This includes both residential and nonresidential buildings, main and accessory buildings.
- F. “Certificate of appropriateness” means the commission has reviewed the proposed changes to a local register property or within a local register historic district and certified the changes as not adversely affecting the historic characteristics of the property which contribute to its designation.

G. “Certified local government” or “CLG” means the local government has been certified by the State Historic Preservation Officer as having established its own historic preservation commission and a program meeting federal and state standards.

H. “Class of properties eligible to apply for special valuation in Tumwater” means all properties listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until Tumwater becomes a certified local government (CLG). Once a CLG, the class of properties eligible to apply for special valuation in Tumwater means only properties listed on the Tumwater register of historic places or properties certified as contributing to the Tumwater register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

I. “Cost” means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

J. A “district” is a geographically definable area – urban or rural, small or large – possessing a significant concentration, linkage, or continuity of sites, buildings, structures, and/or objects united by past events or aesthetically by plan or physical development.

K. “Emergency repair” means work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.

L. “Historic property” means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is listed in a local register of a certified local government or the National Register of Historic Places.

M. “Incentives” are such rights or privileges or combination thereof which the city council, or other local, state, or federal public body or agency, by virtue of applicable present or future legislation, may be authorized to grant or obtain for the owner(s) of register properties. Examples of economic incentives include but are not limited to tax relief, conditional use permits, rezoning, street vacation, planned unit development, transfer of development rights, facade easements, gifts, preferential leasing policies, beneficial placement of public improvements or amenities, or the like.

N. “Local review board” or “board” used in Chapter 84.26 RCW and Chapter 254-20 WAC for the special valuation of historic properties means the commission created in TMC 2.62.040.

O. “National Register of Historic Places” means the national listing of properties significant to our cultural history because of their documented importance to our history, architectural history, engineering, or cultural heritage.

P. An “object” is a thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Q. “Ordinary repair and maintenance” means work where the purpose and effect of such work is to correct any deterioration or decay of or damage to the real property or structure appurtenance therein and to restore the same, as nearly as may

be practicable, to the condition prior to the occurrence of such deterioration, decay, or damage.

R. “Owner” of property is the fee simple owner of record as exists on the Thurston County assessor’s records.

S. “Significance” or “significant” used in the context of historic significance means the following: a property with local, state, or national significance is one which helps in the understanding of the history of the local area, state, or nation (whichever is applicable) by illuminating the local, statewide, or nationwide impact of the events or persons associated with the property, or its architectural type or style in information potential. The local area can include Tumwater, Thurston County, or southwest Washington, or a modest geographic or cultural area, such as a neighborhood. Local significance may apply to a property that illustrates a theme that is important to one or more localities; state significance to a theme important to the history of the state; and national significance to property of exceptional value in representing or illustrating an important theme in the history of the nation.

T. A “site” is a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains, or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now nonexistent building or structure if the location itself possesses historic cultural or archaeological significance.

U. “Special valuation for historic properties” or “special valuation” means the local option program which when implemented makes available to property owners a special tax valuation for rehabilitation of historic properties under which the assessed value of an eligible historic property is determined

at a rate that excludes, for up to ten years, the actual cost of the rehabilitation. (Chapter 84.26 RCW.)

V. “State Register of Historic Places” means the state listing of properties significant to the community, state, or nation but which do not meet the criteria of the National Register.

W. A “structure” is a work made up of interdependent and interrelated parts in a definite pattern of organization. Generally constructed by man, it is often an engineering project.

X. “Universal Transverse Mercator” or “UTM” means the grid zone in metric measurement providing for an exact point of numerical reference.

Y. “Waiver of a certificate of appropriateness” or “waiver” means the commission has reviewed the proposed whole or partial demolition of a local register property or in a local register historic district and failing to find alternatives to demolition has issued a waiver of a certificate of appropriateness which allows the building official or director of community development to issue a permit for demolition.

Z. “Washington State Advisory Council’s Standards for the Rehabilitation and Maintenance of Historic Properties” or “State Advisory Council’s Standards” means the rehabilitation and maintenance standards used by the Tumwater historic preservation commission as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

(Ord. O2017-015, Amended, 04/17/2018; Ord. 1400, Added, 10/19/1993)

2.62.040 Tumwater historic preservation commission.

A. Creation and Size. There is hereby established a Tumwater historic preservation commission, consisting of seven members, as provided in subsection C of this section. Members of the Tumwater historic preservation commission shall be appointed by the mayor and approved by the city council and shall be residents of the city except as provided in subsection (B)(2) of this section.

B. Composition of the Commission.

1. All members of the commission must have a demonstrated interest and competence in historic preservation and possess qualities of impartiality and broad judgment.

2. The commission shall always include at least two professionals who have experience in identifying, evaluating, and protecting historic resources and are selected from among the disciplines of history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography, American studies, law, and real estate. The commission action that would otherwise be valid shall not be rendered invalid by the temporary vacancy of one or all of the professional positions, unless the commission action is related to meeting certified local government (CLG) responsibilities cited in the certification agreement between the mayor and the State Historic Preservation Officer. Furthermore, exception to the residency requirement of commission members may be granted by the mayor and city council in order to obtain representatives from these disciplines.

3. In making appointments, the mayor may consider names submitted from any source, but the mayor shall

notify history and city development-related organizations of vacancies so that names of interested and qualified individuals may be submitted by such organizations for consideration along with names from any other source.

C. Terms. The original appointment of members to the commission shall be as follows: three for two years, two for three years, and two for four years. Thereafter, appointments shall be made for a three-year term. Vacancies shall be filled by the mayor for the unexpired term in the same manner as the original appointment.

D. Powers and Duties. The major responsibility of the historic preservation commission is to identify and actively encourage the conservation of the city's historic resources by initiating and maintaining a register of historic places and reviewing proposed changes to register properties; to raise community awareness of the city's history and historic resources; and to serve as the city's primary resource in matters of history, historic planning, and preservation.

In carrying out these responsibilities, the historic preservation commission shall engage in the following:

1. Conduct and maintain a comprehensive inventory of historic resources within the boundaries of the city and known as the Tumwater historic inventory; publicize and periodically update inventory results. Properties listed on the inventory shall be recorded on official zoning records with an "HI" (for historic inventory designation). This designation shall not change or modify the underlying zone classification.

2. Initiate and maintain the Tumwater register of historic places. This official register shall be compiled of buildings, structures, sites, objects, and districts identified

by the commission as having historic significance worthy of recognition by the city and encouragement of efforts by owners to maintain, rehabilitate, and preserve properties.

3. Review nominations to the Tumwater register of historic places according to criteria in TMC 2.62.050 and adopt standards in its rules to be used to guide this review.

4. Review proposals to construct, change, alter, modify, remodel, move, demolish, and significantly affect properties or districts on the register as provided in TMC 2.62.060; and adopt standards in its rules to be used to guide this review and the issuance of a certificate of appropriateness or waiver.

5. Provide for the review either by the commission or its staff of all applications for approvals, permits, environmental assessments or impact statements, and other similar documents pertaining to identified historic resources or adjacent properties.

6. Conduct all commission meetings in compliance with Chapter 42.30 RCW, Open Public Meetings Act, to provide for adequate public participation and adopt standards in its rules to guide this action.

7. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic resources.

8. Establish liaison support, communication and cooperation with federal, state, and other local government entities which will further historic preservation objectives, including public education, within the city area.

9. Review and comment to the city council on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of the city, other neighboring communities, the county, the state or federal governments, as they relate to historic resources of Tumwater.
10. Advise the city council generally on matters of Tumwater history and historic preservation.
11. Perform other related functions assigned to the commission by the city council.
12. Provide information to the public on methods of maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities.
13. Officially recognize excellence in the rehabilitation of historic buildings, structures, sites and districts, and new construction in historic areas; and encourage appropriate measures for such recognition.
14. Be informed about and provide information to the public and city departments on incentives for preservation of historic resources including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties.
15. Submit nominations to the State and National Registers of Historic Places.
16. Investigate and report to the city council on the use of various federal, state, local or private funding sources available to promote historic resource preservation in Tumwater.

17. Serve as the local review board for special valuation and:

- a. Make determination concerning the eligibility of historic properties for special valuation;
- b. Verify that the improvements are consistent with the Washington State Advisory Council's Standards for Rehabilitation and Maintenance;
- c. Enter into agreements with property owners for the duration of the special valuation period as required under WAC 254-20-070(2);
- d. Approve or deny applications for special valuation;
- e. Monitor the property for continued compliance with the agreement and statutory eligibility requirements during the ten-year special valuation period; and
- f. Adopt bylaws and/or administrative rules and comply with all other local review board responsibilities identified in Chapter 84.26 RCW.

18. The commission shall adopt rules of procedure to address subsections (D)(3), (4), and (6) of this section.

E. Compensation. All members shall serve without compensation.

F. Rules and Officers. The commission shall establish and adopt its own rules of procedure, and shall select from among its membership a chairperson and such other officers as may be necessary to conduct the commission's business.

G. Commission Staff. Professional staff assistance shall be provided to the commission by city staff as may be necessary to aid the commission in carrying out its duties and responsibilities under this section.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O2000-002, Amended, 01/18/2000; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.050 Tumwater register of historic places.

A. Criteria for Determining Designation in the Register. Any building, structure, site, object, or district may be designated for inclusion in the Tumwater register of historic places if it is significantly associated with the history, architecture, archaeology, engineering, or cultural heritage of the community; if it has integrity; is at least fifty years old, or is of lesser age and has exceptional importance; and if it falls in at least one of the following categories:

1. Is associated with events that have made a significant contribution to the broad patterns of national, state, or local history.
2. Embodies the distinctive architectural characteristics of a type, period, style, or method of design or construction, or represents a significant and distinguishable entity whose components may lack individual distinction.
3. Is an outstanding work of a designer, builder, or architect who has made a substantial contribution to the art.

4. Exemplifies or reflects special elements of the city's cultural, social, economic, political, aesthetic, engineering, or architectural history.
5. Is associated with the lives of persons significant in national, state, or local history.
6. Has yielded or may be likely to yield important archaeological information related to history or prehistory.
7. Is a building or structure removed from its original location but which is significant primarily for architectural value, or which is the only surviving structure significantly associated with a historic person or event.
8. Is a birthplace or grave of a historical figure of outstanding importance and is the only surviving structure or site associated with that person.
9. Is a cemetery, which derives its primary significance from age, from distinctive design features, or from association with historic events, or cultural patterns.
10. Is a reconstructed building that has been executed in a historically accurate manner on the original site.
11. Is a creative and unique example of folk architecture and design created by persons not formally trained in the architectural or design professions, and which does not fit into formal architectural or historical categories.

B. Process for Designating Properties or Districts to the Tumwater Register of Historic Places.

1. Any person may nominate a building, structure, site, object, or district for inclusion in the Tumwater register of

historic places. Members of the historic preservation commission or the commission as a whole may generate nominations. In its designation decision, the commission shall consider the Tumwater historic inventory and the Tumwater comprehensive plan.

2. In the case of individual properties, the designation shall include the UTM reference and all features, interior and exterior, and outbuildings which contribute to its designation.

3. In the case of districts, the designation shall include description of the boundaries of the district; the characteristics of the district, which justify its designation; and a list of all properties including features, structures, sites, and objects, which contribute to the designation of the district.

4. The historic preservation commission shall consider the merits of the nomination, according to the criteria in this section and according to the nomination review standards established in rules, at a public meeting. Adequate notice will be given to the public, the owner(s) and the authors of the nomination, if different, and lessees, if any, of the subject property prior to the public meeting according to standards for public meetings established in rules and in compliance with Chapter 42.30 RCW, Open Public Meetings Act. Such notice shall include publication in a newspaper of general circulation in Tumwater, and posting of the property. If the commission finds that the nominated property is eligible for the Tumwater register of historic places, the commission shall make recommendation to the city council that the property be listed in the register with owner's consent. The city council shall make the final designation of the subject property to

the Tumwater register of historic places. The public, property owner(s) and the authors of the nomination, if different, and lessees, if any, shall be notified of the listing.

5. Properties listed on the Tumwater register of historic places shall be recorded on official zoning records with an “HR” (for historic register) designation. This designation shall not change or modify the underlying zone classification.

C. Removal of Properties from the Register.

1. Owner Appeal for Removal. The property owner may appeal to the Tumwater city council in writing to remove the designation of their property to the Tumwater register of historic places citing the circumstances which warrant the removal. The Tumwater city council will act within ninety days of the written appeal with the recommendation of the Tumwater historic preservation commission.

2. Tumwater Historic Preservation Commission Process for Removal. In the event that any property is no longer deemed appropriate for designation to the Tumwater register of historic places by the Tumwater historic preservation commission, the commission may initiate removal from such designation by the same procedure as provided for in establishing the designation, subsection (B)(4) of this section. A property may be removed from the Tumwater register without the owner’s consent.

D. Effects of Listing on the Register.

1. Listing on the Tumwater register of historic places is an honorary designation denoting significant association with the historic, archaeological, engineering, or cultural heritage of the community. Properties are listed

individually or as contributing properties to a historic district.

2. Prior to the commencement of any work on a register property, excluding ordinary repair and maintenance and emergency measures defined in TMC 2.62.030 and those exemptions listed in TMC 2.62.060, the owner must request and receive a certificate of appropriateness from the commission for the proposed work. Violation of this rule shall be grounds for the commission to review the property for removal from the register.

3. Prior to whole or partial demolition of a register property, the owner must request and receive a waiver of a certificate of appropriateness.

4. Properties listed on the Tumwater register of historic places may be eligible for a special tax valuation on their rehabilitation (TMC 2.62.080).

(Ord. O2017-015, Amended, 04/17/2018; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.060 Review of changes to Tumwater register of historic places properties.

A. Review Required. No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the Tumwater register of historic places or within a historic district on the Tumwater register of historic places without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review. Historic cemeteries shall be reviewed under subsection C of this section and in compliance with TMC Chapter 12.40.

The review shall apply to all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form. Information required by the commission to review the proposed changes is established in rules.

B. Exemptions. The following activities do not require a certificate of appropriateness or review by the commission:

1. Ordinary repair and maintenance;
2. Painting as part of ordinary repair and maintenance that is consistent with the historic register designation report for the property;
3. Emergency measures defined in TMC 2.62.030; and
4. Resurfacing of areas such as parking lots, trails, sidewalks, and streets with materials that are consistent with the historic register designation report for the property.

C. Review Process.

1. Requests for Review and Issuance of a Certificate of Appropriateness or Waiver. An applicant shall file their building permit application with a request for review or issuance of a certificate of appropriateness with the department of community development. The building official or director of community development shall report any application for a permit to work on a designated Tumwater register property or in a Tumwater register historic district to the commission. If the activity is not exempt from review, the commission shall notify the applicant of the review requirements. The building official or director of community development shall not issue any such permit until a certificate of appropriateness or a

waiver is received from the commission but shall work with the commission in considering building and fire code requirements.

2. Commission Review. The owner or his/her agent (architect, contractor, lessee, etc.) shall apply to the commission for a review of proposed changes on a Tumwater register property or within a Tumwater register historic district and request a certificate of appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. All such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations within thirty days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time.

The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision, including how the project addresses the Secretary of the Interior's Standards for the Treatment of Historic Properties (and as amended). Rehabilitation will be the default Secretary of Interior standard used, unless the applicant and the commission mutually agree to use one of the other three types of Secretary of the Interior's standards: preservation, restoration, or reconstruction.

Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits

granted. If the owner agrees to the commission's recommendations, a certificate of appropriateness shall be awarded by the commission according to standards established in the commission's rules.

The commission's recommendations and, if awarded, the certificate of appropriateness shall be transmitted to the building official or director of community development. If a certificate of appropriateness is awarded, the building official or director of community development may then issue the permit.

3. Demolition. A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Tumwater register property or in a Tumwater register historic district. The owner or his/her agent shall apply to the commission for a review of the proposed demolition and request a waiver. The applicant shall meet with the commission in an attempt to find alternatives to demolition. These negotiations may last no longer than forty-five days from the initial meeting of the commission, unless either party requests an extension. If no request for an extension is made and no alternative to demolition has been agreed to, the commission shall act and advise the building official or director of community development in charge of issuing a demolition permit of the approval or denial of the waiver of a certificate of appropriateness. Conditions in the case of granting a demolition permit may include allowing the commission up to forty-five additional days to develop alternatives to demolition. When issuing a waiver the commission may require the owner to mitigate the loss of the Tumwater register property by means determined by the commission at the meeting. Any conditions agreed to by the applicant in this

review process shall become conditions of approval of the permits granted. After the property is demolished, the commission shall initiate removal of the property from the register.

4. Appeal of Approval, Denial, or Waiver of a Certificate of Appropriateness. The commission's decision regarding an approval, denial or waiver of a certificate of appropriateness may be appealed to the hearing examiner within ten days. The appeal must state the grounds upon which the appeal is based. The appeal shall be reviewed by the hearing examiner only on the records of the commission. Appeal of the hearing examiner's decision regarding an approval, denial, or waiver of a certificate of appropriateness may be appealed to superior court.

(Ord. O2017-015, Amended, 04/17/2018; Ord. O2014-018, Amended, 12/16/2014; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.070 Relationship to zoning.

Properties designated to the register shall be subject to the provisions set forth herein, as well as the bulk, use, setback, and other controls of the zoning district in which they are located. Nothing contained herein shall be construed to be repealing, modifying, or waiving any zoning provisions.

(Ord. 1400, Added, 10/19/1993)

2.62.080 Review and monitoring of properties for special property tax valuation.

A. Timelines.

1. Applications shall be forwarded to the commission by the assessor within ten days of filing.

2. Applications shall be reviewed by the commission before December 31 of the calendar year in which the application is made.
3. Commission decisions regarding the applications shall be certified in writing and filed with the assessor within ten days of issuance.

B. Procedure.

1. The assessor forwards the application(s) to the commission.
2. The commission reviews the application(s), consistent with its rules of procedure, and determines if the application(s) are complete and if the properties meet the criteria set forth in WAC 254-20-070(1) and listed in TMC 2.62.050.
 - a. If the commission finds the properties meet all the criteria, then, on behalf of the city, it enters into a historic preservation special valuation agreement (set forth in WAC 254-20-120 and in subsection D of this section) with the owner. Upon execution of the agreement between the owner and commission, the commission approves the application(s).
 - b. If the commission determines the properties do not meet all the criteria, then it shall deny the application(s).
3. The commission certifies its decisions in writing and states the facts upon which the approvals or denials are based and files copies of the certifications with the assessor.

4. For approved applications:
 - a. The commission forwards copies of the agreements, applications, and supporting documentation (as required by WAC 254-20-090(4) and identified in subsection (C)(2) of this section) to the assessor;
 - b. Notifies the State Historic Preservation Officer and the Department of Revenue that the properties have been approved for special valuation; and
 - c. Monitors the properties for continued compliance with the agreements throughout the ten-year special valuation period.

5. The commission determines, in a manner consistent with its rules of procedure, whether or not properties are disqualified from special valuation either because of:
 - a. The owner's failure to comply with the terms of the agreement; or
 - b. Because of a loss of historic value resulting from physical changes to the building or site.

6. For disqualified properties, in the event that the commission concludes that a property is no longer qualified for special valuation, the commission shall notify the owner, assessor, and State Review Board in writing and state the facts supporting its findings.

C. Criteria.

1. Historic Property Criteria. The class of property eligible to apply for special valuation in Tumwater means

only properties listed on the Tumwater register of historic places or properties certified as contributing to a Tumwater register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

2. Application Criteria. Complete applications shall consist of the following documentation:

- a. A legal description of the historic property;
- b. Comprehensive exterior and interior photographs of the historic property before and after rehabilitation;
- c. Architectural plans or other legible drawings depicting the completed rehabilitation work;
- d. Notarized affidavit attesting to the actual cost of the rehabilitation work completed prior to the date of application and the period of time during which the work was performed and documentation of both to be made available to the commission upon request; and
- e. For properties located within historic districts, in addition to the standard application documentation, a statement from the Secretary of the Interior or appropriate local official, as specified in local administrative rules or by the local government, indicating the property is a certified historic structure, is required.

3. Property Review Criteria. In its review the commission shall determine if the properties meet all the following criteria:

- a. The property is historic property;

- b. The property is included within a class of historic properties determined eligible for special valuation by the city under subsection (C)(1) of this section;
- c. The property has been rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) (and identified in TMC 2.62.030) within twenty-four months prior to the date of application; and
- d. The property has not been altered in any way which adversely affects those elements which qualify it as historically significant as determined by applying the Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties (WAC 254-20-100(1) and listed in subsection (C)(4) of this section).

4. Rehabilitation and Maintenance Criteria – The Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties. The following rehabilitation and maintenance standards shall be used by the board as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified:

- a. Rehabilitation.
 - i. Every reasonable effort shall be made to provide a compatible use for a historic property, which requires minimal alteration of the building, structure, or site and its environment, or to use a historic property for its originally intended purpose.

ii. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

iii. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

iv. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

v. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

vi. Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different

architectural elements from other buildings or structures.

vii. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

viii. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.

ix. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

x. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

b. Maintenance.

i. Buildings and structures shall not be allowed to deteriorate beyond the point where routine maintenance and repair will return them to good condition.

ii. Buildings shall be kept in a safe and habitable condition at all times. Structural defects and

hazards shall be corrected. Any condition which constitutes a fire hazard shall be eliminated.

iii. Buildings shall be protected against ongoing water damage due to defective roofing, flashing, glazing, caulking, or other causes. Moisture condensation resulting from inadequate heat or ventilation shall be eliminated if present at levels sufficient to promote rot or decay of building materials.

iv. Deteriorated exterior architectural features and any broken or missing doors and windows shall be repaired or replaced.

v. Painted exterior surfaces shall be maintained and repainted as necessary to prevent a deteriorated appearance or damage to the substrate. Exterior masonry surfaces shall be tuck pointed where required to maintain the mortar in good condition. Finished tuck pointing shall match the original mortar joint in hardness and appearance.

D. Agreement. The following historic preservation special valuation agreement shall be used by the board as the minimum agreement necessary to comply with the requirements of RCW 84.26.050(2):

This Historic Preservation Agreement is entered into on this _____ day of _____ 20__ by and between _____ (hereinafter referred to as APPLICANT) and _____ (hereinafter referred to as LOCAL REVIEW BOARD).

WHEREAS APPLICANT is the owner of record of the historic property commonly known as _____ located at _____, State of Washington, as more fully described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as PROPERTY); and

WHEREAS APPLICANT has requested special valuation of the PROPERTY pursuant to chapter 84.26 RCW; and

WHEREAS the LOCAL REVIEW BOARD has determined that the PROPERTY has been substantially rehabilitated within the two year period preceding the date of application and the actual cost of said rehabilitation equals or exceeds twenty-five percent of the assessed valuation of the PROPERTY prior to the improvements; and

WHEREAS the LOCAL REVIEW BOARD has verified that the PROPERTY is historic property that falls within a class of properties determined eligible for special valuation by local ordinance or administrative rule; and

WHEREAS the LOCAL REVIEW BOARD finds that the rehabilitation work has not altered the PROPERTY in any way which adversely affects those elements which qualify it as historically significant;

NOW THEREFORE, in recognition of the foregoing, the APPLICANT enters into this Agreement with the LOCAL REVIEW BOARD and agrees to adhere to the following terms and conditions for the ten-year period of the special valuation classification:

1. APPLICANT agrees to comply with the Washington State Advisory Council's Standards for the Maintenance and Rehabilitation of Historic

Properties as set forth in Exhibit B, which is attached hereto and by this reference incorporated herein.

2. APPLICANT agrees the property shall not be altered without the prior written consent of the LOCAL REVIEW BOARD signed by a duly authorized representative thereof. No construction, alteration or remodeling or any other action shall be undertaken or permitted to be undertaken which would affect the historic character of the PROPERTY which classifies it as eligible for special valuation, or which would affect the appearance of the PROPERTY as depicted in the photographs attached hereto and incorporated herein by this reference as Exhibits ____ through _____, or which would adversely affect the structural soundness of the PROPERTY; or refinishing of presently existing parts or elements of the PROPERTY subject to this Agreement, damage to which has resulted from casualty loss, deterioration or wear and tear, shall be permitted without the prior approval of the LOCAL REVIEW BOARD, provided that such reconstruction, repair, repainting, or refinishing is performed in a manner which will not alter the appearance of those elements of the PROPERTY and shall include, but not be limited to, any substantial structural change or any change in design, color or materials.

3. APPLICANT agrees the PROPERTY shall not be demolished without the prior written consent of the LOCAL REVIEW BOARD.

4. APPLICANT agrees to make historic aspects of the PROPERTY accessible to the public one day each

year if the PROPERTY is not visible from a public right of way.

5. APPLICANT agrees to monitor the PROPERTY for its continued qualification for special valuation and notify the appropriate County Assessor within 30 days if the PROPERTY becomes disqualified because of:

- a. a loss of historic integrity,
- b. sale or transfer to new ownership exempt from taxation, or
- c. sale or transfer to new ownership which does not intend to agree to the terms of this Agreement nor file a notice of compliance with the County Assessor.

6. The APPLICANT and LOCAL REVIEW BOARD both agree that there shall be no changes in standards of maintenance, public access, alteration, or report requirements, or any other provisions of this Agreement, during the period of the classification without the approval of all parties to this Agreement.

Term of the Agreement. This Agreement shall take effect immediately upon signature and remain in effect until the property is no longer eligible for special valuation either through disqualification under RCW 84.26.080 or upon expiration of the ten-year

period of special valuation commencing January 1, 20__ and ending December 31, 20__.

Hold Harmless. The APPLICANT or its successors or assigns shall hold the State and the LOCAL REVIEW BOARD harmless from any and all liability and claims which may be asserted against the State and the LOCAL REVIEW BOARD as a result of this Historic Preservation Special Valuation Agreement or the participation by the APPLICANT in the Special Valuation Program.

Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of Washington.

E. Appeals. Any decision of the board acting on any application for classification as historic property, eligible for special valuation, may be appealed to superior court under RCW 34.04.130 in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization.

(Ord. O2017-015, Amended, 04/17/2018; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

LARSON LAW, PLLC

August 30, 2024 - 12:27 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 58881-1
Appellate Court Case Title: Save the Davis Meeker Garry Oak, Appellant v. Debbie Sullivan, Respondent
Superior Court Case Number: 24-2-01895-3

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A copy of the uploaded files will be sent to:

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