

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

SAVE THE DAVIS MEEKER
GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her
capacity of Mayor of Tumwater

Respondent.

NO. 58881-1-II

**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 was Tree Risk Assessment Qualified to

conduct tree risk assessments when I led a team of arborists to assess the risks posed by the Davis Meeker Garry Oak (DMGO) located adjacent to Old Highway 99 by the Tumwater Airport. A copy of my curriculum vitae is attached hereto as **Exhibit 1**.

3. In Paragraph 10 of his declaration, Mr. Brower falsely alleges that I am not ISA Tree Risk Assessment Qualified (TRAQ) and attaches an undated screenshot from TreesAreGood.org. At all times when I assessed the DMGO, and when I prepared the risk assessment report to the City of Tumwater, I was TRAQ qualified. My TRAQ qualification technically expired on June 11, 2024 and I am currently in the process of completing my ISA Tree Risk Assessment Qualification renewal written and performance-based examinations. I attended a TRAQ renewal workshop on April 19, 2024 and I am scheduled for my written exam on July 10, 2024. Once completed and submitted, if passed, my qualification will be updated. This is shown by a screenshot of my qualifications taken from the ISA website (isa-arbor.com),

attached as **Exhibit 2**, which shows my TRAQ qualification that expired on June 11, 2024. I was TRAQ qualified when I assessed the oak and submitted my tree risk assessment report on October 10, 2023 and when I amended my report in May, 2024. Thus, Mr. Brower's statement that I lacked TRAQ credentials is false.

4. Mr. Brower speculates that the branches that fell were due to "sudden branch drop" which can occur in otherwise healthy branches on an infrequent basis. His opinion is misguided because the branches that fell were significantly decayed by white rot. Although sudden branch drop can affect healthy limbs, this case involved a decayed limb and the risk of limb failure is even greater where decay due to fungal infections is present, as it is in the DMGO.

5. In paragraphs 12 & 13 of his declaration, Mr. Brower refers to a March 21, 2024 memo produced by Tumwater Parks and Recreation Director Chuck Denny which correctly states that my tree risk assessment noted "significant rot in the main stem and branches of the tree". My risk assessment along

with the information provided by Amanda Hancock with Waxwing Tree Specialists and Tyler Bunton with Tree Solutions Inc. confirmed that there is significant rot and decay within the trees mainstem and upper canopy. These comprehensive and in-depth assessments utilized multiple commonly used tools such as an increment borer, probe, binoculars, mallet and a state-of-the-art sonic tomographer. He then refers to an email I sent before my team conducted this assessment, which he misrepresents the date of, so that his statement is highly misleading to the court.

6. In paragraphs 26-27 of his declaration, Mr. Brower refers to Exhibit R, which is an email that I sent to Marc LaVack, Transportation Operations Manager with the City of Tumwater. He is incorrect in stating that it was sent on June 28, 2024. It was actually sent on June 28, 2023, as shown on Exhibit R. This was sent before the team conducted its testing to analyze the degree of risk posed by the tree. Mr. Brower has taken isolated sentences from this email in an attempt to support his false comments and predetermined conclusions. The email was

intended to provide Mr. LaVack with an update on my assessment thus far and the need for the future assessments to come. The complete sentence that Mr. Brower refers to was merely a preliminary thought, based on preliminary information at that time. It was in no way my final risk assessment as the email then describes the additional information gathering needed.

7. As I wrote in the June 28, 2023 email to Mr. LaVack, the risk assessment was not complete but that it was my opinion the tree did not pose an extreme or high risk at that specific moment in time. I stated that there was a need for further evaluation in order to provide a complete risk assessment. This was prior to my using a climbing arborist and sonic tomography specialist along with my own additional assessments that provided critical information which I then used for my final risk assessment submitted on October 10, 2023. My final opinions and report assessing the risks posed by the tree came a full 3 months following the preliminary email that Brower

inappropriately relies upon. My email in no way contradicts the findings of my October 10, 2023 report, which was issued after all the data had been gathered and analyzed.

8. In paragraphs 27-29 of his declaration, Brower criticizes my report's conclusions that the tree should be removed. My conclusions were based on a full risk assessment, which Mr. Brower has not done. Based on all the information, including information from the climbing arborist, sounding she took, and information generated by Tree Solutions, Inc., it was my conclusion that the assessed oak had a significant amount of decay in the stem base, lower main stem, east facing co-dominant stem and large scaffold branches. This was all noted in the comments of my final risk assessment report. Mr. Brower presents no information to refute these observations.

9. In paragraph 31 of his declaration, Brower claims I erred in calculating the Risk Rating Matrices for the tree. He is wrong. I previously addressed the issue or question posed by Mr. Brower concerning my 'High' risk rating and the risk rating

matrices in paragraph 4 of my declaration submitted on May 29, 2024 to the Thurston County Superior Court. Mr. Brower is not even considering the updated report that I issued to correct an error in transcribing field data to the report. This led to an update being issued on May 10, 2024, which Mr. Brower ignores. The changes had no impact on the risk rating of the tree, which remains “high” in my opinion. My report, as amended, was submitted to the Thurston County Superior Court as Exhibit 1 to the Declaration of Mayor Debbie Sullivan.

10. In paragraph 33 of his declaration, Mr. Brower claims I made a mistake in assigning the ‘Likelihood of Impacts’ to targets in my assessment. He alleges that photographs taken after the fact show that only the tips of trees reached the roadway. My report is appropriate because it was based on first-hand information I was provided by City staff along with a representative from the WA State Patrol Aviation Division. It was not based on speculation from photographs taken after the tree limbs were moved out of the travel lanes of Old Highway

99, as Mr. Brower's speculative opinions are. See Brower Declaration, paragraph 6 (Exhibits C, D, E)

11. Indeed, Brower's statement is further contradicted by a report submitted as Exhibit N to the Declaration of Ronda Larson Kramer which describes the extent of the limbs falling in the roadway as a "blocking hazard" and "obstruction" in the roadway. This work order shows that the City worker spent 2 hours "cleared branches out of the highway". This report is consistent with the observations I received and described in my report. I note that Mr. Brower has no personal knowledge of what occurred and is again speculating based on his interpretation of photographs.

12. In paragraph 34 of his declaration, Mr. Brower criticizes my team's use of soundings to assess the condition of the tree. The soundings using a mallet was certainly not the sole basis of my recommendation for removal and nowhere in my report is that stated. This tool was simply *part* of the assessment which also included increment boring, probing, ocular

assessment, aerial inspection, and sonic tomography. That is a misrepresentation of my report and false assumption by Mr. Brower.

13. Mr. Brower again is speculating about how the soundings were taken to falsely imply that it was inappropriate to include this methodology in assessing the tree. Sounding is most definitely an accepted method or tool for conducting a risk assessment. It is just *one* of the steps that I use. I've been doing risk assessment for over 30 years and in that time, I have learned to differentiate between solid and decayed wood and even the difference in species. Differences in the tone of the soundings can be discerned to the trained ear and many times they are quite obvious. What I hear can then prompt me to whether I need to conduct a more thorough assessment. Although soundings are part of the process, I do not base my determinations completely on soundings. Mr. Brower's declaration falsely implies that I was listening at the base of the tree to soundings taken by the

climbing arborist. She is qualified and reported her own soundings, in addition to my own observations.

14. Brower further speculates that soundings couldn't be taken because of traffic noise. Ambient noise can be accommodated, particularly at this location. There are breaks in traffic, it is flat and the road is straight. An opportune time can be easily observed and predicted. Like any kind of testing, it is done during times that will give you the most accurate results. That is a commonality throughout many fields.

15. In paragraph 35 of his declaration, Mr. Brower conflates sonic tomography taken at the base of the tree with the report's conclusions about probable limb failure. As previously stated, the results from the sonic tomography provided me with the information necessary to come to a risk determination and recommended removal. Nowhere does my report state that this information was connected to my determination that there would be limb failure. That conclusion was based on the aerial assessment of our climbing arborist who reported that there was:

extensive white rot decay within the large scaffold that recently experienced failure at the union (see photo). Further examination determined that the main stem's decay column continues upward into the eastern co-dominant stem and large diameter scaffold branches.

Mr. Bunton's memo presenting the sonic tomography data and his opinion was requested and again, this was taken into consideration in my risk determination.

16. In paragraph 36 of his declaration, Mr. Brower opines that the most likely fungal pathogen infecting the tree is *Armillaria* spp. He disputes a statement attributed to me at a council meeting that the tree has an infection of *Ganoderma* spp. The type of fungal pathogen was not determined by a lab evaluation and it is not included in my report. However, it is my professional opinion that *Ganoderma* spp is contributing to the decay within the tree, along with *Armillaria* spp. and other pathogens.

17. Finally, Brower submits the work of another arborist, Paul A. Dubois VI, of Keyport Arboricultural

Consulting to support his conclusions. This report is a level 1 assessment, which did not physically inspect or test the condition of the DMGO, but instead relied on observations of others, especially the City's team of arborist. Dubois acknowledges at least moderate risk is presented by the DMGO. He acknowledges that the presence of birds in a cavity half-way up the main stem is "good indicator of the presence of decay". This confirms the findings of the city's team of arborists, which was a much more intensive, level 3 assessment. In acknowledging this risk, Dubois recommends an aerial inspection by a climbing arborist. This, however, is exactly how the city's team proceeded in its Level 3 assessment which conducted physical testing to evaluate the conditions present in the DMGO. Mr. Dubois' opinions discount the conclusions of the City's arborists and seem more result oriented as he states an opinion that this "special tree" should be retained even though he believes that arborists have "much yet to know". Apparently he believes that

if you ask enough arborists, you will eventually get the opinion you desire.

18. None of the comments submitted by Mr. Brower affect the validity of my report as amended. I stand by my recommendation that the tree should be removed.

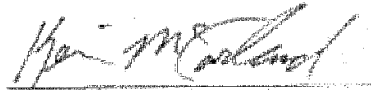
DATED this 12th day of July, 2024 at Belfair, Washington.

Kevin McFarland

if you ask enough arborists, you will eventually get the opinion you desire.

18. None of the comments submitted by Mr. Brower affect the validity of my report as amended. I stand by my recommendation that the tree should be removed.

DATED this 12th day of July, 2024 at Belfair, Washington.



Kevin McFarland

Exhibit 1

SOUND URBAN FORESTRY, LLC

Kevin M. McFarland

P.O. Box 489 ~ Tahuya, WA 98588

360/870-2511

suf1234@comcast.net, www.soundurbanforestry.com

1994-PRESENT: Consulting Urban Forester, Certified Arborist and Tree Risk Assessment Qualified. Specializing in appraisals, risk assessments, diagnosis, planning, urban landscape design and management.

Contracted City Forester: City of Bremerton Parks & Recreation and Public Works & Utilities Departments, Bremerton, WA - Current

Contracted City Urban Forester: City of Tumwater Community Planning and Development, Tumwater, WA – Current

Contracted City Arborist: City of Poulsbo Parks & Recreation Department, Poulsbo, WA - Current

On-Call Professional Service Agreement: City of Tacoma Public Works Department, Tacoma, WA, Current

On-Call Hazard Tree Management Services: City of Olympia Community Planning and Development, Olympia, WA - Current

Contracted Tree Protection Professional: City of Lacey Community Planning and Development, Lacey, WA – Current

On-Call Professional Serves Agreement: Puget Sound Energy, Vegetation Management Program, Bellevue, WA, 3 Year Contract (2023-2026).

QUALIFICATIONS

Bachelor of Science in Natural Resources, Forest Resource Management, Ohio State University, Columbus, OH. 1991.

International Society of Arboriculture Certification (ISA), Cert. PN-0373A

ISA Tree Risk Assessment Qualified (TRAQ), in process of renewal 7/18/2024

PROFESSIONAL MEMBERSHIPS

International Society of Arboriculture

Society of Municipal Arborists

The National Arbor Day Foundation

Exhibit 2

9:21

5G

www.isa-arbor.com

ISA Professional Member

Expires: 2/26/2025

SMA Membership

Expires: 2/26/2025

Pacific Northwest Chapter

Membership

Expires: 2/26/2025

MY CREDENTIALS

CERT ID: PN-0373A

Current Credentials

ISA Certified Arborist®

Expires: 12/31/2026

View CEUs: 5

Tree Risk Assessment

Qualification

Expires: 6/11/2024

**Apply for an ISA Certification / Make Your
Recertification Payment**

Expired Credentials

Tree Risk Assessment

Qualification

Expired: 6/11/2024

Apply

LAW LYMAN DANIEL KAMERRER & BOGDANOVICH

July 15, 2024 - 11:36 AM

Transmittal Information

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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

The following documents have been uploaded:

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