



CITY OF KIRKLAND

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
123 FIFTH AVENUE, KIRKLAND, WA 98033
425.587.3225 - www.kirklandwa.gov

To: Hearing Examiner

From: Judd Tuberg,
Code Enforcement Officer

Date: May 29, 2012

Subject: HEARING FOR SCOTT R.BORGESON, NOTICE OF CIVIL VIOLATION FOR VIOLATION OF TREE REMOVAL REGULATIONS KZC 95.23, AND TABLE 95.33.1, AND KMC 1.12.100, AND TABLE 1.12.100.3., LOCATED AT 13841 62nd AVENUE NE; KIRKLAND, WA; PLANNING DEPARTMENT FILE NO. COM11-00329

I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter. The person(s) responsible for the violation is Scott R. Borgeson or his agents.

II. ISSUES PRESENTED

- A. Does the removal of trees by respondent at the above address on or about October 31, 2011, violate the applicable KZC and KMC regulations governing the removal of significant trees in Kirkland?
- B. Is the respondent, as the party responsible for the violation per KMC Table 1.12.100.3., required to restore tree credits for each significant tree removed from the violation site as provided in KZC Table 95.33.1 and KMC1.12.100 (f)?
- C. Is the respondent, as the party responsible for the violation per KMC Table 1.12.100.3., subject to civil penalties of \$1000.00 for each significant tree removed at the above address?
- D. Is the respondent subject to additional civil penalties of \$100.00 per day if he fails to comply with the date set by the Hearing Examiner's pending decision in this matter confirming the Notice of Civil Violation and requiring the payment of fines for each significant tree illegally removed per KMC Table 1.12.100.3., and 1.12.100 (e), and restoration of trees credits per KZC Table 95.35.1 and KMC 1.12.100 (f)?

III. STATEMENT OF FACTS

- A. The 7,350 square foot site is zoned RSA 4, and is an undeveloped site currently listed as "vacant land for sale". The site was annexed into the City of Kirkland from unincorporated King County on June 1, 2011.
- B. On or about October 31, 2011, the City received a telephone complaint that trees had been removed on the unimproved site at 13841 62nd Avenue NE, Kirkland, WA.
- C. I visited the complaint site and confirmed that approximately 11 trees had been removed over a large area of the site including 5 significant trees which I measured and identified with numbered metal tree tags, and documented the tree removal evidence with photographs.
- D. I issued a Cease And Desist Order on November 1, 2011, posted a laminated copy of the order at the violation site, and sent a copy by US Mail to the respondent property owner on November 2, 2011, to his address of record with the King County Assessor.
- E. On May 16, 2012, I issued a Notice of Civil Violation: Trees to the respondent, sent a copy by US Mail to him at his address of record with the King County Assessor, and posted a laminated copy at the violation site.

IV. LEGAL ANALYSIS

- A. The 2 tree removal allowance within a 12 month period, as regulated by KZC 95.23.5, is not applicable to undeveloped property.
- B. The respondent or his agents removed 5 significant trees (tree tag numbers 118.119.121, 123, & 124) from the undeveloped, vacant violation site, or adjacent street right-of-way, on or about October 31, 2011, without applying for or obtaining the required city permits in violation of KMC 1.12.100.3., thereby incurring fines of \$1,000. for each of the 5 significant trees illegally removed, together with required tree restoration of 5 tree credits (1 credit for each of 5 significant trees removed based on the DBH diameter of each removed tree) as provided by KMC 1.12.100. (e) and (f), KZC 95.23.2 and KZC Table 95.33.1.
- C. The respondent applied to King County for a permit to construct a new single-family residence on the subject undeveloped site (parcel #376170-0227) on December 14, 2004, under King County permit application #BO4L2320. King County Permit application #BO4L2320 remains pending with King County and has not been approved, authorized or issued to the respondent, and did not operate to confer authorization or approval for the respondent or his agents to remove 5 significant trees from the subject property either (1) prior to the annexation date of June 1, 2011, or (2) on or about October 31, 2011, after the June 1, 2011, date the site was annexed into the City of Kirkland. In short, the pending King County permit application #BO4L2320 did not prospectively authorize clearing, grading or tree removal at the subject undeveloped Holmes Pointe site. After the effective date of annexation on June 1, 2011, Kirkland ordinances prohibiting the removal of any significant

trees on subject undeveloped property operated as a legitimate exercise of zoning power justifying the \$5,000.00 civil penalties and required 5 tree credit tree restoration sought from the respondent as specified in the Notice of Civil Violation :Trees.

V. CONCLUSION

- A. The subject tree removal violations are a clear violation of KMC Chapter 1.12, and KZC Chapter 95, the City tree protection ordinances. If the respondent refuses to pay the \$5,000.00 civil penalties, and to restore 5 tree credits to the damaged violation within a reasonable time after a decision is issued by the Hearing Examiner upholding the Notice of Civil Violation: Trees dated May 16, 2012, the City requests that an additional fine of \$100.00 per day be imposed on the respondent until such time as the Corrective Action specified in the Notice of Civil Violation: Trees dated May 16, 2012, is certified by the assigned Code Enforcement Officer as corrected.

Exhibit:

- A. Staff Report

Attachments:

1. Notice of Civil Violation
2. Affidavit of Service
3. GIS area map of violation site
4. List of removed significant trees
5. Photographs of tree removal areas
6. Email statement of Jarrod Lewis, King County DDES



CITY OF KIRKLAND

Planning and Community Development
 Code Enforcement
 123 5th Avenue, Kirkland, WA 98033
 (425)587-3225 – Fax: (425)587-3232
www.kirklandwa.gov

NOTICE OF CIVIL VIOLATION: TREES

(Kirkland Municipal Code 1.12.040)

Date: May 16, 2012 <u>Property Owner Information</u> Name: Scott R. Borgeson Address: 11410 NE 124th Street, #333 City, State, Zip: Kirkland, WA 98034	Case Number: COM11-00329 ENF 11-294 <u>Violation Information</u> Site Address: 13841 62nd Avenue NE. City, State, Zip: Kirkland, WA 98034 Parcel #: <u>376170-0227</u>
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Code Provision(s) Violated:	Section 95.23, Table 95.33.1, and Definition 95.10.14., Kirkland Zoning Code, and Section 1.12.100, and Table 1.12.100.3, Kirkland Municipal Code.
Description of Violation:	Removing 5 significant trees from a vacant, undeveloped site (listed for sale) at 13841 62nd Avenue NE, Kirkland, WA or adjacent public property or a public right-of way on or about October 31, 2011, without applying for or obtaining a required city permit.
Inspection Dates:	Oct. 31, 2011, Nov. 1, 2011, Nov. 4, 2011, Feb. 29, 2012, and April 5, 2012, and May 11, 2011.
Date(s) of Violation:	On or about October 31, 2011.
Person(s) Responsible For:	Scott R. Borgeson or his agents.
Request for Voluntary Compliance:	Not Applicable per Section KMC 1.12.040 (2) (C) or (D).
Corrective Action Compliance Date: (see below for Corrective Action)	June 5, 2012, 9AM.
Hearing Date:	June 7, 2012, 9AM.

HEARING NOTICE:

On June 7, 2012(date) at 9 AM (time) the Kirkland Hearing Examiner shall hold a hearing in City Council Chambers, 123 5th Avenue, Kirkland, WA, 98033, 2nd floor, Kirkland City Hall relating to the above issued Notice of Civil Violation: Trees. If the required corrective action is completed AND written approval is obtained from the issuing party at least 48 hours prior to the hearing, the hearing shall be cancelled and no monetary penalty assessed. If you choose NOT to complete the required corrective action by that time, the hearing shall continue as scheduled.

CORRECTIVE ACTION:

Pay the Civil Penalty according to KMC Table 1.12.100.3: \$1,000. times five (5) illegally removed trees = \$5,000. Complete the required restoration according to KMC 1.12.100 (f): Submit a restoration plan to restore five (5) tree credits in the unlawfully damaged areas of the violation site.

Payment of a monetary penalty pursuant to Chapter KMC 1.12.100 does not relieve the person to whom the Notice of Civil Violation was issued of the continued duty to correct the violation.

ISSUED BY: Judd Tuberg, Code Enforcement Officer
 Phone: (425)587-3290 - Email: jtuberg@kirklandwa.gov

METHOD OF SERVICE:

Hand Delivered Postal Mail Posted at Subject Property Site



GIS MAPPING PORTAL ~ City of Kirkland, Washington ~ Department of Information Technology



Legend

- Address
- City Limits
- Grid
- QQ Grid
- Streets
- Parcels
- ComPlace Names
- Buildings
- Lakes
- Parks
- z_Image09
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3

1: 501



Attachment 3

0.0 0 0.01 0.02 Miles

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Enter Map Description







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**Joe Coakley
206.979.0693**

































From: [Judd Tuberg](#)
To: ["Lewis, Jarrod"](#)
Cc: [Nancy Cox](#)
Subject: RE: Current Status Of King County Building Permit #BO4L2330 Applied For By Scott R. Borgeson On 12-14-04 Re Undeveloped Parcel #376170-0227.
Date: Friday, June 01, 2012 9:27:15 AM
Attachments: [image001.png](#)

Jarrold,

Thank you for your additional work efforts, assistance, and cooperation in this matter.

Judd

From: Lewis, Jarrod [mailto:Jarrod.Lewis@kingcounty.gov]
Sent: Friday, June 01, 2012 9:07 AM
To: Judd Tuberg
Subject: RE: Current Status Of King County Building Permit #BO4L2330 Applied For By Scott R. Borgeson On 12-14-04 Re Undeveloped Parcel #376170-0227.

Judd,

King County DDES would consider clearing and/or grading a construction activity as a permit application would be required for both. Again, DDES has not authorized any work (such as clearing) to occur on this parcel.

Jarrold M. Lewis | King County DDES | 206-296-6713 | www.kingcounty.gov/permits

From: Lewis, Jarrod
Sent: Thursday, May 31, 2012 4:12 PM
To: 'Judd Tuberg'
Subject: RE: Current Status Of King County Building Permit #BO4L2330 Applied For By Scott R. Borgeson On 12-14-04 Re Undeveloped Parcel #376170-0227.

Judd,

There have been no construction authorizations from DDES for parcel 376170-0227. Building permit B04L2330 is a Pending application with DDES and until the permit is Approved by DDES and Issued by the City of Kirkland no construction is authorized under that permit application. Two of the permits on the parcel were cancelled prior to issuance. The sensitive areas inquiry L03SA021 and pre-application meeting do not authorize any construction.

I hope this helps.

Parcel List								
Parcel	Number	Type	Sub Type	Level	Date	Status	Name	
376170-0227	A06PM188	PREAPP	LUSD	A	04/25/2006	COMPLETE	BORGESON SCOTT	
376170-0227	B04L2320	DWELLIN	SINGLE	P	12/14/2004	PENDING	COMMUNITY BUILDERS GF	
376170-0227	L03SA021	SENSDE	INQUIRY	P	04/16/2003	COMPLETE	HAUGEN, JASON & PETRA	
376170-0227	L07VA004	VARIANC	VAR	P	08/14/2007	CANCELED	COMMUNITY BUILDERS GF	
376170-0227	L09GI059	G-INSPC	INSPGRAD	A	02/11/2009	CANCELED	BORGESON SCOTT	

Record: 1 of 5

Select Parcel Numbers Like

Filters:
 Status: Type: SubType:
 Entered Date Between: and

Select Multiples & Make Activity Set
 Show Address Attachments
 Back Stop

Jarrold M. Lewis

Planning/Customer Services Section Supervisor

Building & Fire Services Division

Department of Development and Environmental Services

900 Oakesdale Avenue Southwest

Renton, WA 98057-5212

(206) 296-6713 FAX (206) 296-6644

E-mail: jarrod.lewis@kingcounty.gov

Mailstop: OAK-DE-0100

From: Judd Tuberg [<mailto:JTuberg@kirklandwa.gov>]

Sent: Wednesday, May 30, 2012 12:47 PM

To: Lewis, Jarrod

Subject: Current Status Of King County Building Permit #BO4L2330 Applied For By Scott R. Borgeson On 12-14-04 Re Undeveloped Parcel #376170-0227.

Dear Jarrod Lewis:

Please confirm that the current status of the subject King County Building Permit # BO4L2320 for a new single-family residence at 13841 62nd Avenue NE, Kirkland, WA remains pending, and has not been authorized, approved or issued by King County.

Please confirm (1) that King County Building Permit #BO4L2320 did not authorize or approve any construction activity, clearing, or tree removal at undeveloped parcel # 376170-0227 prior to the time this parcel was annexed into the City of Kirkland on June 1, 2011, and (2) that none of the several other King County permit applications associated with parcel # 376170-0227 authorized construction activity,

clearing or tree removal at the subject undeveloped parcel prior to the time this parcel number was annexed into the City of Kirkland on June 1, 2011.

Thank you for your assistance and cooperation in this matter.

Judd Tuberg
Code Enforcement Officer
City of Kirkland