

HEARING EXAMINER MINUTES – APRIL 20, 2006

CALL TO ORDER:

The April 20, 2006 meeting was convened by the Hearing Examiner Pro Tem, Anne Watanabe at 9:00 a.m. Craig Salzman and Jeremy McMahan represented the Department of Planning and Community Development.

PUBLIC HEARING: James and Carolyn Sisley and John M. Gilday Appeal, File No. APL06-0004

Hearing Examiner Anne Watanabe advised this public hearing was in regard to a Code violation issued by the department for tree cutting. The Hearing Examiner was conducting the hearing pursuant to the authority of Section 170.40, Kirkland Zoning Code (KZC) and the rules and procedures provided by the Administrative Procedure Act, Chapter 34.05, RCW. She advised in an administrative hearing the city and the appellants may participate. Under the Code, the City has a burden of proof by a preponderance of the evidence to show a violation occurred. She advised she would issue a written decision within 8 days of the close of the hearing. She swore in everyone who would be offering testimony.

Code Enforcement Officer Craig Salzman explained the issues were, 1) whether the appellant had trees cut or were responsible for trees being cut in violation of the KZC on the lot identified by parcel #0120000200 with addresses of 229, 299 and 301 8th Street South, 2) whether the appellant were responsible for replanting the amount of trees established by Table 1.1 KZC, and 3) whether the appellants were required to pay fines of \$6,000 based upon the illegal cutting of six trees on the site.

Mr. Salzman explained on or about February 13, 2006 he received letter of complaint stating several trees were cut on the property at 299 8th Street South, letter attached as Exhibit 1. A cease and desist notice was posted on property on February 23, 2006. On March 1, 2006 he photographed and measured the 9 trees he considered significant, attached as Exhibit 6. He subsequently discovered his calculations were incorrect as each property was allowed to remove two trees legally within a 12 month period, and the number of trees removed without a permit was reduced from 9 to 6.

A civil citation was issued March 3, 2006 to the property owners James & Carolyn Sisley and tenant John Gilday. Notice attached as Exhibit 3. The citation was issued after Mr. Gilday visited the City and stated he wanted to apply for permits to remove more trees from the property based on his statement that there were hazard trees. Mr. Salzman noted that Mr. Gilday claimed on March 3, 2006 he was given permission from “you guys” to cut all the trees on the site and that there was no issue because only cottonwoods were cut. Mr. Gilday believed that as a result of a conversation he had with a city employee, he was given permission not to protect trees on a different site and asserted removal of the trees on this site was allowed.

On March 27, 2006, Mr. Salzman conducted an inspection of the site with Elizabeth Walker, the City’s arborist, to determine if his evaluation of the trees cut in violation was proper and for Ms. Walker to assess the trees cut to determine whether there was any cause for removal based on hazard or disease. Ms. Walker’s evaluation did not determine any disease or reason to label the

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trees as a hazard. He displayed a panoramic photograph taken from 8th Street South illustrating the trees cut on the site, pointing out most of the trees fell within the lot. He identified a tree he originally counted as three which was later corrected to be one tree with three trunks. In addition to the 6 illegally cut trees a number of smaller trees were also cut, demonstrating the wholesale cutting on the site without a request for permission or permit from city.

Mr. Salzman referred to a King County ortho photo taken in April 2002 that demonstrates the site was fully vegetated. He advised in discussions with Mr. Sisley, he learned Mr. Sisley leased the property to Mick Plath who is not a party to this action as Mr. Sisley and Mr. Gilday agree Mr. Gilday did the tree cutting. Mr. Sisley did not give permission or participate in the tree cutting and Mr. Salzman stated Mr. Sisley should not held liable for tree cutting activity on the site.

James Sisley, property owner, stated he did not give permission to cut/remove trees without a permit. He acknowledged the trees on the property were cut but he did not cut them.

Ms. Watanabe entered the exhibits submitted by Mr. Salzman into record. Mr. Salzman also submitted a CD of the photographs which Ms. Watanabe entered as an exhibit.

John Gilday, tenant in partnership with Mick Plath in the property located at 229 8th Street South, advised the lease stated they were to use the property for parking small vehicles including placing gravel on the property. During conversations, Mr. Sisley and he agreed that they considered cottonwood trees to be weed trees. He advised the lease contained in the packet was incomplete and submitted the complete lease signed by Mr. Sisley, identifying reference to parking in the final paragraph.

Mr. Gilday referred to the ortho photograph of the lot, identifying the two houses that form a wind corridor that protects trees in one area of the wooded lot and leaves trees in the area where the trees were felled in danger of windblow.

Mr. Gilday relayed a meeting he had at 500 7th Avenue South, the Pace Chemical site, four days before the trees were cut where staff was instructing him regarding methods of protecting certain trees on that site. At that time Mr. Salzman and another Kirkland employee, David Barnes, were on site. In the course of determining which trees needed to be enclosed by cyclone fencing, he inquired about cottonwood and alders, and was told those don't matter, we don't care what you do with those. He understood this to mean staff did not care what was done with cottonwoods or alders. This belief was reinforced by the fact that three 150-200 foot red alders did not need to be protected and staff stated they would likely be removed by new owner.

Mr. Gilday submitted a University of Oregon meteorological report that classified this year's Superbowl windstorm as the second worst windstorm to hit the northwest inland area in seven years. Previous windstorms and that windstorm dropped trees or exposed the rootball in a manner that the trees would not survive.

Mr. Gilday emphasized trees were only removed in the wind corridor that he identified on the ortho photograph. He noted two of the trees were pulled out as they were already prone on

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ground. He noted 2-3 trees were removed because their rootballs were exposed and a 3-trunk tree was removed due to damage to the center trunk and his belief based on his conversation with city staff that removal was within the City's code. He described his work with Kirkland over the past seven years and his ability to obtain answers from staff, asserting he had never done anything circuitously.

Mr. Gilday recalled that a Kirkland Police Officer was parked nearby while the tree cutting occurred and he did not intervene. He reiterated that although Mr. Sisley had nothing to do with cutting, Mr. Sisley, Mr. Plath and he had several conversations about removing the downed trees and cutting the damaged trees and the lease was clear that removal would be necessary to place gravel on the site to park equipment.

Mick Plath, explained he was Mr. Sisley's tenant, a past tenant of Mr. Gilday's in a building he managed nearby, and a business owner in the City. He spoke as an independent third party, supporting the credibility of both Mr. Sisley and Mr. Gilday, finding both to be honest and that neither would knowingly do anything to violate the code. He recalled when writing the leases with Mr. Sisley and Mr. Gilday, that there was some discussion about parking vehicles in the treed portion of the lot. He noted specific cutting was not discussed, only placing gravel on the site to park truck trailers/containers. He assumed that meant some of the scrub trees would be removed. He commented on calls he had received from Mr. Salzman attempting to eliminate the hearing in order to proceed with a planting plan. He understood an attempt was made to provide a tree planting plan which the city would not accept until the appeal process was completed.

Mr. Gilday referred to an earlier statement that if he submitted a replanting plan, there was a possibility this matter could be corrected without a citation. He developed and submitted a replanting plan to Elizabeth Walker. He asked Mr. Salzman whether he had stated that unless they dropped the appeal the city would not accept the replanting plan. Mr. Salzman answered he discussed with Ms. Walker the comment that the city refused the replanting plan; her response was she had not had any discussions regarding the replanting plan nor had she seen a replanting plan.

Mr. Gilday provided copies of several emails between his assistant, Mr. Salzman, Ms. Walker and him regarding the replanting plan. In response to issues raised earlier in Mr. Gilday's testimony, Mr. Salzman referred to Section 95.15 applicability of permit required, which states no person directly or indirectly shall remove any tree on any property within the city. Section 95.20 offers exemptions including emergency tree removal which require the party removing the tree to contact the city within 7 days to provide evidence of exemption which was not done in this instance. With regard to the tree removal to extend a parking area, Mr. Salzman referred to Section 105.17, site plan review, that requires before commencing development activity on a new parking area or alteration to an existing parking area, the applicant must submit a site plan for approval by the Planning Department which was not done in this instance. Mr. Salzman advised he was not present at the meeting between Mr. Gilday and Mr. Barnes at the Pace Chemical site, the Code Enforcement Officer on site was Judd Tuberg.

Ms. Watanabe asked if she were to assume that Mr. Gilday's recounting of his conversation with Mr. Barnes and Mr. Tuberg were accurate and he was led to believe the cottonwood and alder

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could be removed without a permit, could that be considered a mitigating circumstance? Mr. Salzman answered that based on statements from Mr. Barnes and Mr. Tuberg, their conversation was inaccurately portrayed by Mr. Gilday; that they were discussing a specific site and protection of trees away from the work site. Mr. Barnes denies making a statement that Mr. Gilday could remove any trees he wished as long as they were alder or cottonwood. Mr. Salzman advised if there were detrimental reliance, the department would consider it a mitigating circumstance.

Mr. Gilday advised he had known Mr. Tuberg for many years and he was not the Code Enforcement Officer at the site that day. He acknowledged there were no cottonwoods on the Pace Chemical site but his question addressed both types of trees.

Ms. Watanabe entered the lease agreement and emails as exhibits. A brief recess was held while staff located Mr. Barnes.

Ms. Watanabe swore in David Barnes, Planner. Mr. Salzman relayed Mr. Gilday's assertion that while meeting at the Pace Chemical site, Mr. Barnes gave him permission to do anything he wanted with cottonwood or alder trees. Mr. Barnes answered that was not correct. He was conducting a tree fencing inspection at the Pace Chemical site regarding where tree fencing was required. He acknowledged there were some cottonwood or alder trees on that site but they were close to the foundation of the building which would not allow them to be fenced. The City's urban forester advised those trees did not need to be fenced but that was not an authorization to cut trees on that site or another site.

Mr. Gilday asked Mr. Barnes whether he specifically asked about protecting cottonwood or alder trees. Mr. Barnes answered he was unsure whether that question was asked but in relation to the site they were on, tree fencing was not required around several trees that may/may not have been cottonwoods or alders. He reiterated that was not an authorization to remove/cut trees on another site. Mr. Gilday asked whether he asked a specific question whether the city required him to protect cottonwoods or alders. Mr. Barnes answered he did not know.

Mr. Gilday asked Mr. Barnes who accompanied him on that day. Mr. Barnes answered Kevin Cricchio, Planner and Sean LeRoy, Planning Information Specialist. Mr. Gilday withdrew his assertion that it was Mr. Salzman.

Ms. Watanabe swore in Judd Tuberg, Code Enforcement Officer. Mr. Salzman asked Mr. Tuberg whether he recalled any discussions regarding removal of trees at this site. Mr. Tuberg recalled he talked with Mr. Gilday at the Pace Chemical site on March 20 when he was checking on the status of a demolition permit and vehicles on the site. Mr. Tuberg referred to his notes from his contact with Mr. Gilday that day, where Mr. Gilday indicated Mr. Barnes had told him that they did not have to protect cottonwoods or alders on the west side of Pace Chemical site but that he should not have concluded from that conversation that he could remove cottonwoods or alders elsewhere. He did not recall any other conversation with Mr. Gilday regarding trees.

Mr. Gilday asked whether the tree cutting had already occurred when his conversation with Mr. Tuberg occurred. Mr. Tuberg agreed it had. Mr. Gilday asked whether Mr. Tuberg had ever

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known him to try to slip anything past the Building department. Mr. Tuberg answered he was not aware of any instances.

Mr. Plath relayed his attempts to eliminate miscommunication, a phone call to Mr. Salzman asking if he would act as an intermediary and subsequent phone call and a meeting with Nancy Cox. In his opinion the miscommunication could have been eliminated and the issue resolved without an appeal via face-to-face meetings between the parties.

Ms. Watanabe inquired about the calculations that were made. Mr. Salzman referred to Table 1.1 Chapter 95, advising he measured the trees on the site, his measurement was contained in Exhibit 6. The tree measurements were then entered into Table 95.35.1 to determine the tree credits. He advised his first calculation on the citation was in error and was later corrected.

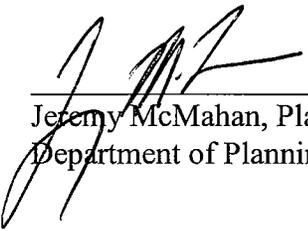
With regard to the replanting plan, Ms. Watanabe inquired about standards for a replanting plan and when would it need to be submitted. Mr. Salzman advised the restoration plan must be professionally prepared and include the species, size, planting time, etc. to ensure survival. The plan Mr. Gilday discussed with staff this week was a proposal to plant trees 5 feet apart around the perimeter of the site which was not acceptable. Mr. Plath clarified at the meeting earlier this week with Ms. Cox, Mr. Gilday proposed planting trees 5 feet apart on perimeter but he was amenable to other options.

Mr. Salzman requested a 3-year maintenance agreement for the replanting be recorded on the title which would require replacement of any trees that did not survive for three years.

Ms. Watanabe encouraged Mr. Plath to continue as an intermediary in an effort to reach resolution before she issued her decision.

ADJOURNMENT:

Hearing no further testimony, the Hearing Examiner declared the hearing closed at 10:01 a.m.



Jeremy McMahan, Planning Supervisor
Department of Planning and Community Development

Recording Secretary: Jeannie Dines
NORTHSHORE BUSINESS SERVICE