



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: March 8, 2012

Subject: HEARING FOR ANNA AND ROY SELVIDGE, NOTICE OF CIVIL VIOLATION FOR VIOLATION OF THE TREE REMOVAL REGULATIONS KMC, 1.12.100 AND TABLE 1.12.100, AND KZC 95.23, TABLE 95.33.1., AND 95.10 .3., 14. & .19, LOCATED AT 139 8TH AVENUE, KIRKLAND, WA (PARCEL #388580-6840); PLANNING DEPARTMENT FILE NO. COM12-00027.

I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter.

II. ISSUES PRESENTED

- A. Whether on or about February 7, 2012, Anna and Roy Selvidge, the property owners or their agents ("respondents") removed more than the maximum 2 significant trees allowed in a 12 month period at 137 and 139 8th Avenue, Kirkland, WA without applying for or obtaining a required city permit in violation of KMC Section 1.12.100, and Table 1.12.100, and KZC Section 95.23, and Table 95.33.1.
- B. If Issue A. above is confirmed how many excess significant trees were removed at 139 8th Avenue on or about February 7, 2012, by Anna and Roy Selvidge as the responsible parties must pay \$1,000. for each significant tree removed in excess of the maximum of 2 allowed in a 12 month period pursuant to KMC Table 1.12.100.3., in addition to completing a required tree restoration with tree credit value established by KZC Table 95.33.1 in conformance with the Selvidge's submittal to the city of tree restoration plan to be approved by the Planning Dept. pursuant to KMC Section 1.12.100(f)(1) & (2)(A) & (B).
- C. Whether Anna and Roy Selvidge are responsible for an additional \$100.00 per day monetary penalties for a first violation as provided by KMC 1.12.040.7(e)(1), beginning on the date the Notice of Civil Violation is affirmed by the Hearing Examiner unless Anna and Roy Selvidge: (1) pay the \$2,000 tree removal civil penalties to the city, and (2) submit a tree restoration plan to the Planning Dept for review and approval agreeing to restore 5 tree credits at the violation site.

III. STATEMENT OF FACTS

Anna and Roy Selvidge purchased the residential property a 139 8th Avenue on November 16, 2011.

On February 7, 2012, p.m., the Planning Dept. received a complaint of tree removal activities at 139 8th Avenue. I investigated this complaint, and observed that 6 trees, a mix of deciduous and conifer trees, had been removed.

When I arrived at the site I also observed that one 17 inch DBH conifer tree was being removed by a 3-4 man crew from AAdams Tree Service together with 2 large trucks and 2 chippers at the adjoining residence to the west at 137 8th Avenue. I talked with Anna Selvidge. She stated that her west side property line bumped out westward to include the 17 inch DBH conifer tree. Anna Selvidge claimed that she owned the land on which the 17 inch DBH conifer was located based on an easement and that the conifer tree was a nuisance and was growing too close to the exterior of her daughter's bedroom.

In response to my inquiry, Anna Selvidge said that she hired the AAdams Tree Service to remove the conifer tree at the 137 site, and remove this tree's debris. In addition she hired them to remove the debris from approx. 6 trees at 139 8th Avenue. Those trees were recently removed by her husband and their friends.

Stephen Fraser, the owner of the property at 137 8th Avenue, is an absentee landlord who resides in Singapore. His vacant rental house at 137 8th Avenue, was being shown as a rental at that time. I met the AAdams Tree service removal crew and explained the tree removal violations to them. Although AAdams Tree Service did not have a tree removal permit for either the 139 8th Ave site or the 137 8th Avenue site, they appeared to be working on both sites to remove tree branches, partial tree trunks and tree debris during my site visit on February 7, 2012, PM. I issued a Cease and Desist Order and notified Anna Selvidge and the AAdams Tree Service Crew to stop all tree removal work at the 137 8th Avenue site. I posted the order on the 139 8th Ave. residence, and caused the AAdams tree Service crew to stop work removing the tree and to leave one 14-16 foot height bare tree trunk in place. I allowed them to cleanup accumulated piles of stacked tree branches, partial tree trunks, and debris from the west side of the Selvidge property as they left the site.

I measured the six total trees previously removed on the 139 8th Avenue site and marked them with 6 metal tree tags. I also marked the tree removed from the 137 8th Avenue site with metal tree tag #134. I informed Anna Selvidge that a tree removal violation had occurred on at 139 8th Avenue site, and that a tree restoration would be required by the city with fines of \$1,000 for each significant tree removed without a required city permit over the maximum allowed 2 trees in a 12 month period.

In 1994 a lot line adjustment occurred between the common boundary of what is now 137 8th Avenue and 139 8th Avenue that was recorded as document number 9511060550, including a 1-page survey document of the lot line adjustment area. See Exhibit marked 1-page Survey Document- Old Republic Title, Ltd. This document does not support the Selvidge's claim that they own the property where 1 removed 17 inch DBH conifer tree (metal tree t#134) is located on the NE corner of the 137 8th Avenue site.

IV. LEGAL ANALYSIS

A Significant Tree is defined by KZC Section 95.10.19, as "A tree that is at least six (6) inches in diameter at breast height (DBH) as measured 4.5 feet from the ground.

One significant tree described as a 17 inch DBH conifer tree at 137 8th Ave. (metal tree tag# 134) was removed by the Selvidges or their agents on February 7, 2012. This particular tree removal appears to involve a property ownership dispute issue, and is a private civil matter.

Six trees were removed from the site at 139 8th Avenue with the following tree removal violation findings:

(1) the 2 conifer trees removed from north side of the residence at 139 8th Avenue were not found to be significant trees by reason of their insufficient DBH size (see metal tree tags #132 and #133);

(2) the 2 significant trees (approximately 20 inches in diameter in size) removed from the SW corner of the 139 8th Avenue site (see metal tree tags #131 and 135) were found to be within the scope of KZC 95.23.5.a. tree removal allowances providing that a private property owner of developed property may remove up to 2 significant trees from their property in a 12 month period without having to apply for a tree removal permit; and

(3) the 2 significant trees including the physical removal of 1 significant 17 inch DBH conifer tree (see metal tree tag # 130), together with the removal of 1 10 inch DBH deciduous tree (see metal tree tag #129) by cutting off all of its live crown, or damage to the trunk that is likely to destroy the tree's structural integrity thereby constituting the removal of 1 tree in the SW corner area of the 139 8th Avenue site. (See the definition of "Tree Removal" provided by KZC 95.10.19.(2) or (3)) Removal of the public trees is in violation of KZC 95.23.2., providing in part that " no person directly or indirectly shall remove any significant tree in the City, or any tree in the public right-of-way, without first obtaining a tree removal permit as provided in this chapter." and KMC Table 1.12.100.3. , and therefore require payment of applicable monetary penalties of \$2,000 (\$1,000. for each of the 2 removed significant trees) together with a pre-approved tree restoration required by KMC 1.12.100 (f) in the amount of 5 tree credits (1 tree credit for the 10 inch DBH deciduous tree (tree tag #129) and 4 tree credits for the 17inch DBH conifer tree (tree tag #130) at the tree removal violation site. See KZC Table 95.33.1, and KMC 1.12.100 (f) (1) & (2)(A) & (B) for applicable tree restoration and tree credit information. Note the definition of "crown" is provided by KZC 95.10.3. as: " the area of a tree containing leaf – or needle-bearing branches".

V. CONCLUSION

Staff has determined that the 17 inch DBH conifer tree removed at 137 8th (metal tree tag #134) is not relevant to the case because it is a private, civil matter.

The Planning Dept. requests that the Notice Civil Violation issued to Anna and Roy Selvidge on February 28, 2012 be affirmed, and that additional monetary penalties of \$100.00 per day should not be assessed unless Anna and Roy Selvidge fail at the time

the Notice of Civil Violation is affirmed by the Hearing Examiner to (1) agree to pay the \$2,000 civil penalties owed to the City for removing the 2 significant trees and (2) also submit a timely tree restoration plan to the Planning Dept for review and approval agreeing to restore 5 tree credits.

EXHIBITS:

1. Cease And Desist Order Dated February 7, 2012
2. Notice of Civil Violation Dated February 28, 2012
3. Affidavit of Service – Notice of Civil Violation, Notarized March 2, 2012
4. Relevant Photographs
5. 1-page Survey Document –Old Republic Title, Ltd.
6. Map of Property



CITY OF KIRKLAND
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

ALL PERSONS ARE HEREBY ORDERED TO AT ONCE

CEASE AND DESIST

THE FOLLOWING ACTIVITY:

Removing more than 2 significant trees in a 12 month period in violation of Section 95.23, Kirkland Zoning Code, and Sections 1.12.070 and 1.12.100, Kirkland Municipal Code.

ON THESE PREMISES AT:

*139 8th Avenue, Kirkland WA
(King County Parcel # 388580-6840)*

THIS VIOLATION MUST BE CORRECTED ON OR BEFORE:

3:30 PM, Feb. 7, 2012

STOP ALL Further Tree Removal Activities.

POSTED

AM

PM

Feb. 7, 2012

BY

*J. Tyberg
DPCD*

PHONE

425 587-3290

WARNING

It is unlawful for any person with actual or constructive knowledge of the Order to conduct the activity or do the work covered by the Order until the Code Enforcement Officer has removed the posted copy of the Order and issued written authorization for the activity or work to be continued.

DO NOT REMOVE THIS NOTICE

CASE NO.

ENF12-019

SECTION 170.30 KIRKLAND ZONING CODE



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: February 28, 2012 Property Owner Information Name: Anna and Roy Selvidge Address: 139 8th Avenue City, State, Zip: Kirkland, WA 98033	Case Number: ENF 12-019 Violation Information Site Address: 139 8th Avenue City, State, Zip: Kirkland, WA 98033 Parcel #: 3888580-6840
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Code Provision(s) Violated:	Section 95.23, Table 95.33.1, and definitions 95.10.14, and 95.10.19, Kirkland Zoning Code, and Section 1.12.100, and Table 1.12.100.3., Kirkland Municipal Code.
Description of Violation:	Removing 2 significant trees in excess of the maximum allowed 2 significant trees in a 12 month period at 139 8th Avenue, Kirkland, WA without applying for or obtaining a required city permit.
Inspection Dates:	February 7, 2012, and February 8, 2012, and February 28, 2012.
Date(s) of Violation:	On or about February 7, 2012.
Person(s) Responsible For:	Anna and Roy Selvidge.
Request for Voluntary Compliance:	Not applicable per Section 1.12.040(2) (A), (C), or (D).
Corrective Action Compliance Date: (see below for corrective action)	March 12, 2012, 9:00AM.
Hearing Date:	March 15, 2012, 9:00AM.

HEARING NOTICE:

On March 15, 2012 at 9:00AM 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:

Civil Penalty assessed per KMC Table 1.12.100.3. : \$1,000 times two (2) illegally removed trees = \$2,000.
 Restoration required by 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



CITY OF KIRKLAND

PLANNING AND COMMUNITY DEVELOPMENT

123 Fifth Avenue, Kirkland, WA 98033

Phone: 425.587-3225 – fax: 425.587.3232 ~ www.kirklandwa.gov

**CITY OF KIRKLAND
AFFIDAVIT OF SERVICE – NOTICE OF CIVIL VIOLATION**

STATE OF WASHINGTON)
)ss
CITY OF KIRKLAND)

Judd Tuberg, being first duly sworn on oath, deposes and says: that I am a citizen of the United States of America, over the age of 21 years, that I am competent to be a witness herein; that I did serve one (1) Notice of Civil Violation to:

Anna and Roy Selvidge
139 8th Avenue
Kirkland, WA 98033

by means of:

- HAND DELIVERED
- REGULAR USPS MAIL
- POSTED AT SITE (OF VIOLATION)



on the 28th day of February, 2012.

Affiant Judd Tuberg
Department of Planning and Community Development

Subscribed and sworn to before me this 2nd day of March, 2012.

Caryn Lynn Saban
Notary Public in and for the State of Washington
residing at: Kirkland

My appointment expires: June 8, 2015

cc: File COM12-00027.



129

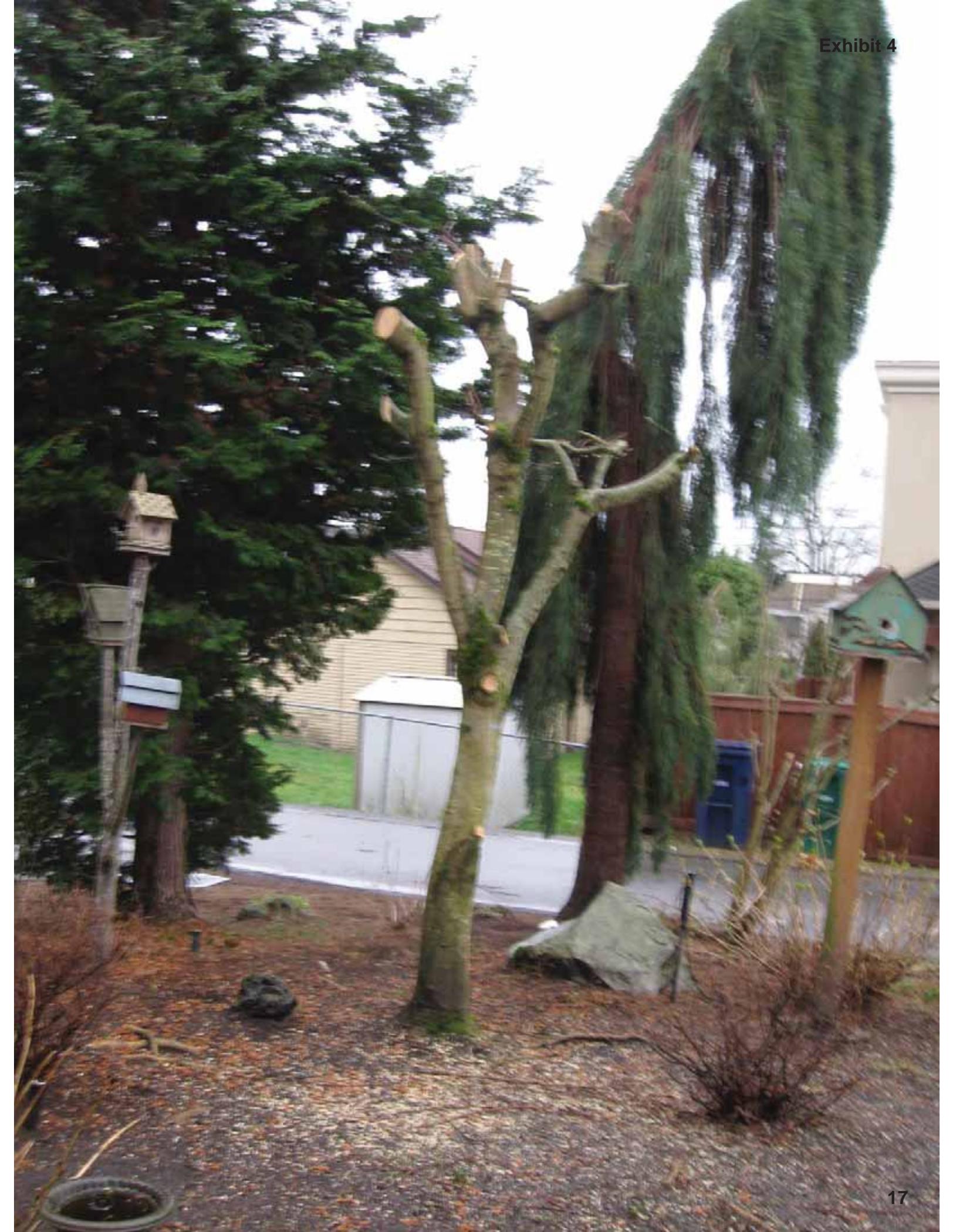






Exhibit 4







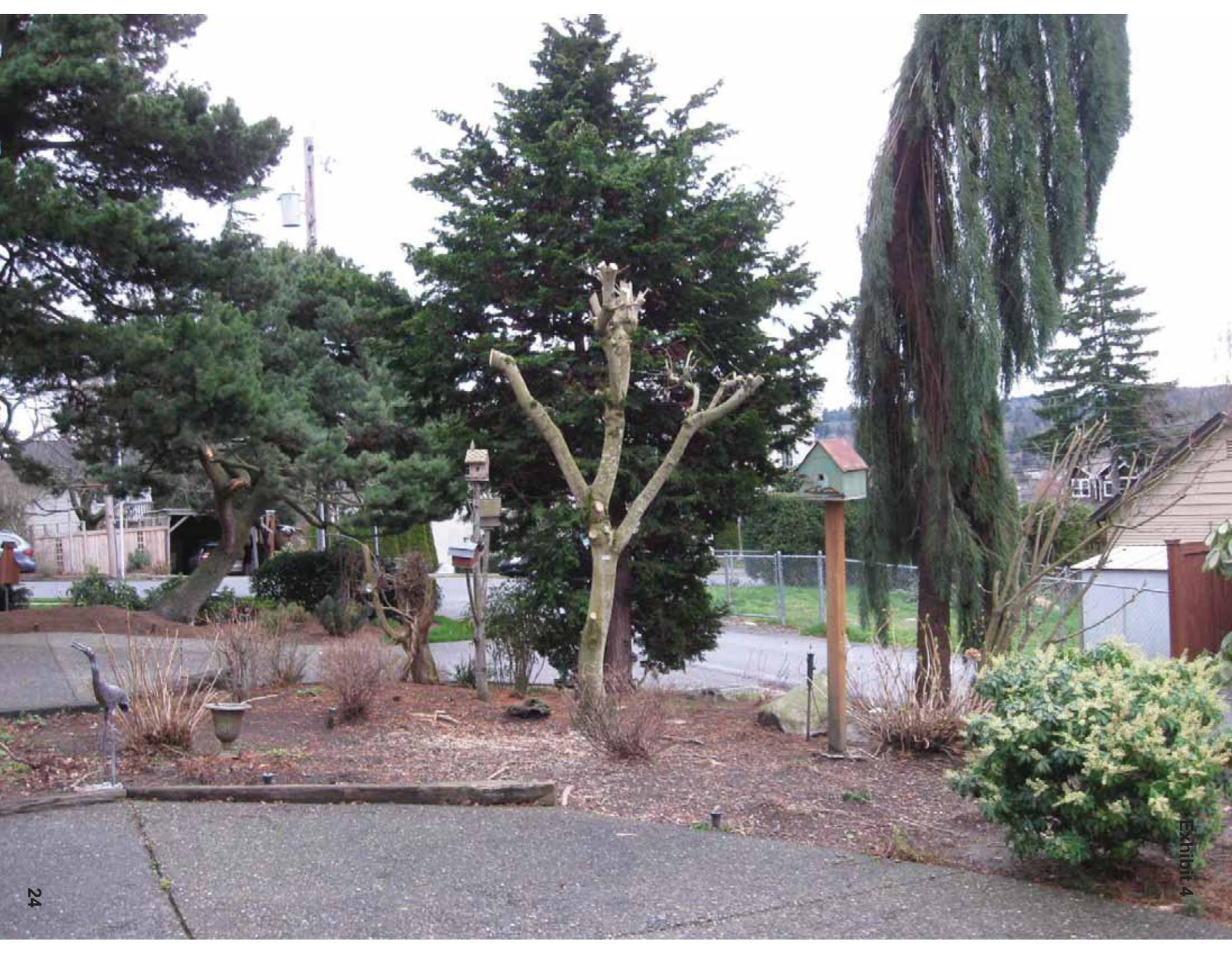












OLD REPUBLIC TITLE LTD L.L. 206-682-0152

APR 04 95 14:56 No. 014 P. 08



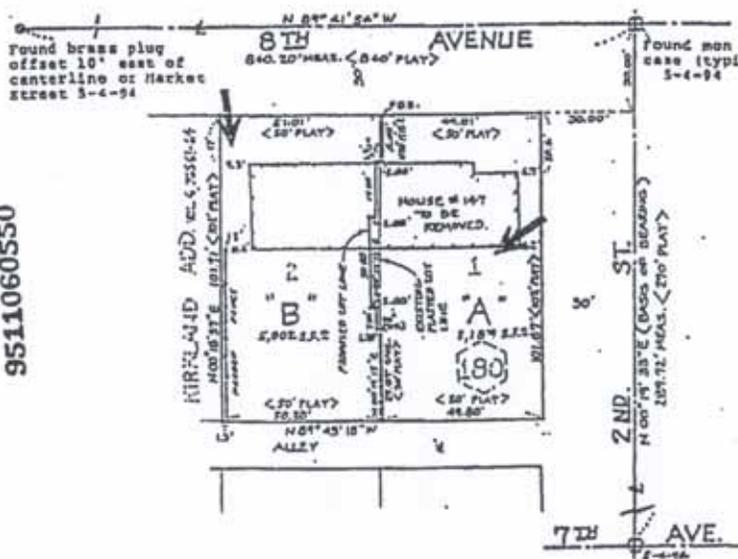
OLD REPUBLIC
TITLE, LTD.

1201 Third Avenue, Suite 1410
Seattle, WA 98101-3095
206-425-1952

Order No. 80553

Plot Vol. 6 Page 53

LLA 94-59 9406201033



9511060550

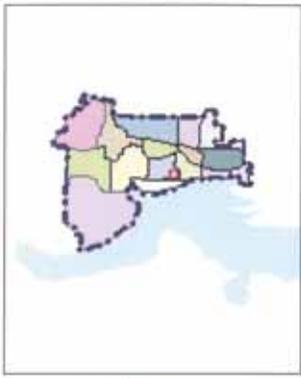
Dimensions of subject premises are _____

This sketch does not purport to show all highways, roads, or easements affecting said property. No liability is assumed for variations in dimensions and location, and is not based upon a survey of the property described in this order. It is furnished without charge, solely for the purpose of assisting in locating the described premises. The Company assumes no liability for inaccuracies therein.

4-Apr-95 1:05p



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
- Schools
- z_Image09
- Red: Band_1
- Green: Band_2
- Blue: Band_3

1:325



Notes

Enter Map Description

0.0 0 0.01 0.01 Miles



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

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THIS MAP IS NOT TO BE USED FOR NAVIGATION

