

## Deborah Powers

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**From:** Mike Smith <Mike@merithomesinc.com>  
**Sent:** Monday, October 15, 2018 12:13 PM  
**To:** Deborah Powers  
**Cc:** Gina Clark; Adam Weinstein  
**Subject:** RE: Tree Code at Planning Commission  
**Attachments:** Tree letter compiled 10-13-17 signed.pdf

Good day Deb,

Thanks for your considered reply. Please see [in-line, below](#):

I've worked in the Puget Sound area in land use for 25 years. Most has been as a planner. I've read, interpreted, and argued code interpretation throughout. I can't overstate the current challenge on trees. I can't review feasibility properly because I can't trust our needs are being considered, and therefore can't project what will and won't be allowed.

Jeremy has said outright that no policy could be written setting minimum owner rights such as 'a zoning-compliant home'. Code interpretation could work, but I know those are disfavored. How far will requirements go? I don't know the answer, but since credits aren't being followed there is no code-based limit. Within current interpretations we could be limited to a 1,500 SF basement house based on nothing but Staff opinion. That is an untenable position for the City, and it borders on impossible for us.

I did a ton of research on the code last year for circulation to the Council. At that time, I'm not sure you were following the issue. I've attached the letter that came out of that effort. The messaging to Planning Commission and Council during the adoption process was that credits were the measure of success. That was the premise, City released a public bulletin January 1, 2006 explaining use of credits and I have multiple examples of how review was done in the first couple years after adoption. I listened to and read minutes of the hearings. Credits were the currency of success.

The central idea I'm trying to get across is that credits aren't being used now in the majority of cases there are no review standards – at all. It's as if we couldn't find out allowable height, setback, or FAR allowances until applying for a building permit. It's not how code is supposed to work and it's not what was intended upon adoption. Planning should understand that, so that we're starting from a clear image of what's happening now before considering where to go.

Thanks again,

Mike

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**From:** Deborah Powers <DPowers@kirklandwa.gov>  
**Sent:** Friday, October 12, 2018 1:41 PM  
**To:** Mike Smith <Mike@merithomesinc.com>  
**Cc:** Gina Clark <GClark@mbaks.com>; Adam Weinstein <AWeinstein@kirklandwa.gov>  
**Subject:** RE: Tree Code at Planning Commission

Hi Mike,

Hope you are well. I disagree that credits are *the* central organizing aspect of Kirkland's tree code. Credits were meant to be the *quantitative* metric for both existing tree retention and minimum replanting requirements. Kirkland's "tree retention values" were meant to work simultaneously as a *qualitative* measure for tree retention. [Agree, 100% that this](#)

is what the code says. Practice is different. The issue is that credits are not used in project evaluation, unless 'below minimum credits' is pre-existing condition. Some of our lots are required to keep 10x the number of credits specified in code – with grove easement spiderwebbing the entire back yard. Using credits, those qualitative assessments would help to set priorities. Without credits, all the trees become high priority. One of the attorneys we've had look at Kirkland trees – assessing code operation subtracting use of credits observed – without credits there are no standards. And that's exactly right, as practiced today there are no standards. Neighboring tree codes – Redmond, Issaquah, Kenmore, Lake Forest Park, Mercer Island, Sammamish, Woodinville, etc all use both a quantitative and a qualitative manner to prioritize tree retention. Not all use credits (some require retention of a certain percentage of existing trees or use 3:1 tree removal to planting ratios) but they've all defined and prioritized a qualitative measure for tree retention (landmark/heritage trees, groves, specimen, etc) in their code according to what's important to the community. Unfamiliar with other codes, but the basic premise you start with is that there *is a quantitative element that is actually followed*. Without any mechanism of measurement success, practice devolves into near reasonable use territory. That might sound alarmist but I think we're right there.

In regards to Planning Commission understanding of the issues – what exactly do you feel they aren't aware of? It may be more effective for you/Master Builders to communicate directly with the Commission. I have a feeling Planning Commission thinks credits are actually being used now. Even that we're debating between a 'canopy system' and a 'credit system' says that a baseline presumption is that we are using some system. I've repeatedly heard that Staff is not balancing property rights against desire for tree retention – but it is inescapable that's the entirety of review, and absent some objective measure, that balancing is ongoing - entirely without code guidance.

I believe Gina is coordinating with the Planning Commission on getting some meetings set up.

Let me know if you have additional questions about the city-wide tree code revision. **Will do!**

Best,

**Deb Powers**  
**Urban Forester**

**ISA Certified Arborist, ISA Tree Risk Assessment Qualified**

City of Kirkland Planning & Building Department

p: 425-587-3261

hrs: Mon-Fri 8am-4:30pm

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**From:** Mike Smith [<mailto:Mike@merithomesinc.com>]

**Sent:** Monday, October 08, 2018 1:24 PM

**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>

**Cc:** Gina Clark <[GClark@mbaks.com](mailto:GClark@mbaks.com)>

**Subject:** RE: Tree Code at Planning Commission

Good day Deb,

I'm copying Gina at Master Builders on this. Your description of the code as described to the Planning Commission is consistent with how most folks on the private side read it. The problem is that current practice doesn't follow the most important aspect of code guidance - credits.

Planning believes that credits only apply where after-construction trees remaining are below credit requirements, necessitating planting. I see credits as the central, organizing principle of the entire code. Within that context, all the rest of it makes sense. Without credits, there are no standards and the balancing between ownership rights and tree protection is entirely within reviewer discretion.

If Planning Commission is unaware what is happening currently, there is no way they can meaningfully address the code. I think the current planning folks would agree with me though I haven't talked to them about it.

**Deborah Powers**

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**From:** Jeremy McMahan  
**Sent:** Thursday, September 26, 2019 2:40 PM  
**To:** Deborah Powers  
**Subject:** FW: Tree Code Amendments

**From:** Marvin Scott <mrnavioout@outlook.com>  
**Sent:** Thursday, September 26, 2019 1:53 PM  
**To:** Planning Commissioners <planningcommissioners@kirklandwa.gov>  
**Subject:** Tree Code Amendments

I am in favor of healthy trees in Kirkland and in fact have planted over 20 trees since first buying my home in Kirkland in 1991. One of the amenities of Kirkland is the wonderful views we have of the Lake, City lights and the Olympic Mountains. I am requesting you take that into consideration and include a reasonable way for a homeowner to maintain the trees on their property so as to preserve their view and the view of their neighbors.

Thank you

Marv Scott, Ret. (almost)  
425-444-6278

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**Deborah Powers**

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**From:** Adam Weinstein  
**Sent:** Wednesday, November 07, 2018 12:53 PM  
**To:** Deborah Powers  
**Subject:** FW: Protecting our Trees - Kirkland needs a better Tree Ordinance

**From:** Amy Kolve [mailto:amy.kolve@gmail.com]  
**Sent:** Wednesday, November 7, 2018 10:04 AM  
**To:** Planning Commissioners <PlanningCommissioners@kirklandwa.gov>  
**Subject:** Protecting our Trees - Kirkland needs a better Tree Ordinance

Dear Kirkland Planning Commission,

Thank you for taking the time to read my email about protecting Kirkland's trees. I'm a long time Kirkland resident, having lived here over 55 years! Lately, I've seen more and more trees being cut and the city and residential neighborhoods are changing, our tree density has greatly diminished over the years.

Currently, I live near OO Denny Park in the Juanita area. We are fortunate to have a beautiful wooded area that supports birds and other animals. Unfortunately, the trees are being overtaken by english ivy and thinning of nearby trees is causing windfall damage to occur more frequently. When I read about what The City would like to do to curtail tree protection of our Holmes Point Overlay standards I cringe, we need to protect these trees from further cutting, allowing homes but with great protection of current standing trees and plans for future ones as well. These trees soak up our CO2 and help reduce global warming caused by greenhouse gases, lets let the amazing biodensity (wood and biomass) unique to the Northwest help lead the way in reducing greenhouse gases. No where else on the planet can one square acre produce as much plant material (our Douglas Firs, Western Maples, Western Hemlocks, Cedars to name a few) to help balance the gases in the air.



## I support the Finn Hill Neighborhood Alliance when it states:

FHNA has said the following:

- Tree canopy goal: Residential subdivisions and short plats should be landscaped to provide a 50% canopy cover when trees mature (e.g., in 20 years' time). Without such a standard, the City won't be able to maintain a 40% canopy cover overall, because business and multi-family areas don't have high tree canopy percentages.
- Tree planting requirements should be based on expected canopy coverage, not tree credits. FHNA asserts that the tree credit system doesn't work. The City's goal is to establish a robust tree canopy, but a tree credit system doesn't measure canopy; it measures trunk size. Different tree species have different canopies, so canopy results will be vastly different depending on which species are planted, even though the same credits may be awarded in each planting scenario. (Compare the wide crowns of deciduous trees to the narrow, columnar profiles of many conifers.) And the current tree credit requirement of 30 credits per acre doesn't approach a 40% canopy cover. Even for big deciduous trees, a 30 credit/acre standard yields less than 20% canopy coverage.
- Existing trees need better protection during development. The code currently says that high retention value trees must be retained "to the maximum extent possible" and moderate retention value trees must be retained "if feasible". But it doesn't seem like these standards have been applied as written. City planners should do more to require that improvements like sidewalks, driveways and even home site footprints be redesigned to save healthy mature trees.
- Landmark trees should be given special protected status and the planting of native species should be encouraged. We've recommended that 50% of trees that must be planted to meet the City's tree density requirements be native species.
- Newly planted trees must be maintained. Builders are required to maintain new tree plantings for 5 years, but once home sites are sold, the builders are effectively relieved of their responsibilities. Builders should, in cases where significant tree planting has been required, post bonds so that the City can require the installation of replacement trees if plantings die within 5 years.

Thank you,  
Amy Kolve  
425-283-7019

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Amy

(425) 283-7019

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## Deborah Powers

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**From:** goodwin <goodwin.hp@gmail.com>  
**Sent:** Wednesday, November 07, 2018 10:06 PM  
**To:** Planning Commissioners  
**Cc:** Scott Morris; City Council; Deborah Powers; Adam Weinstein  
**Subject:** KZC95 meeting 11/8

Dear Commissioners,

Many neighbors understand you have been working on tree agenda items for a long time, thank you. We have to remind ourselves sometimes you guys are volunteers like us. Know what you are doing is making a difference.

Many stakeholders will say 'trees' is Kirkland's #1 most contentious issue. I hope you somehow find the energy to help council tackle this complex issue and find a solution to the problem through this KZC95 revision process.

Tomorrow night (11/8) as we dive into the code I suggest you start the dialogue with staff, before staff launches into their presentation, one question **'What is our tree policy'**. It is very important you ask this question directly to the ranking city leadership person attending the meeting.

Many stakeholders will agree Kirkland's tree policy is unclear. Many will say if there is a policy the city seems to have given up on it.

Thank you for what you do,

Ken Goodwin  
FHNA Member

CC'd:  
 City Council  
 Adam Weinstein  
 Deb Powers  
 Scott Morris

## Deborah Powers

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**From:** Mike Smith <Mike@merithomesinc.com>  
**Sent:** Monday, November 19, 2018 3:03 PM  
**To:** City Council  
**Cc:** Deborah Powers; Adam Weinstein; Gina Clark  
**Subject:** Tree code update comments  
**Attachments:** KZC Chapter 95 Amendments 11-8-18 Commission package 1 of 2.pdf; KZC Chapter 95 Amendments 11-8-18 Commission package 2 of 2.pdf; Planning Commission Letter - Trees Merit 11-7-18 signed.pdf; Council Letter - Trees Merit 11-19-18 signed ms.pdf

**Categories:** High Category

Good afternoon Councilmembers,

As Development Manager at Merit Homes, I spend more time interpreting and implementing code than engaging draft legislation. The tree code is central to our business, and we are following the update process closely. I've attended a number of meetings, including the November 8 Planning Commission Hearing, and today was sent an outline of Council's tree code review November 20.

I don't know if there are different versions of the informational package, the one I saw through the web link was missing a number of attachments the Planning Commission had access to. I've attached those two packages in case there isn't a larger circulation I'm unaware of. My letter of 11/7 was too new to be included in the 11/8 package, and that of 11/19 briefly summarizes some of the promising developments over the last month.

Master Builders and the Finn Hill Neighborhood Alliance have connected and both groups see real potential for meaningful agreement between stakeholders. We'll continue working together and will communicate progress as it is made.

[November 8 Planning Commission video](#)

Thanks so much for your time and attention,

Mike

S. Michael Smith  
MERIT HOMES



Development Manager  
 O – 425-578-0604 | M - 206-755-2660  
[Mike@MeritHomesInc.com](mailto:Mike@MeritHomesInc.com) | [www.MeritHomesInc.com](http://www.MeritHomesInc.com) | [Facebook](#)  
 811 Kirkland Ave, Suite 200, Kirkland, WA 98033

**Deborah Powers**

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**From:** Karen Story <karen@nwnative.us>  
**Sent:** Tuesday, November 20, 2018 8:08 AM  
**To:** Houghton Council; City Council; Deborah Powers; Planning Commissioners  
**Subject:** I support proposed tree code updates

Dear Commission and Councils,

I support city staff's proposed tree code updates. We must increase retention of quality trees, and reduce the loss of canopy cover.

I am also particularly concerned about:

- Developers cutting tree roots during construction and hiding the evidence.
- Trees and tall shrubs/hedges planted too close to lot lines, impinging on neighbors' property. For example, trees that will grow to 20 feet in diameter should not be planted closer than 10 feet from the property line, otherwise the adjacent neighbor will have to deal with pruning branches that extend onto their property. In my case, a developer planted trees against the neighboring lot fence, only five feet from my home. It's only been a few years, and these trees would be scraping the side of my house if I hadn't been pruning them. The arborvitae they planted are beginning to block the light coming into my home.

Sincerely,

Karen Story

## Deborah Powers

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**From:** Jeremy McMahan  
**Sent:** Monday, July 22, 2019 4:31 PM  
**To:** Deborah Powers  
**Subject:** FW: Kirkland Tree Code Update

**From:** Larry Toedtli <larry.toedtli@comcast.net>  
**Sent:** Monday, July 22, 2019 4:26 PM  
**To:** Houghton Council <houghtoncouncil@kirklandwa.gov>  
**Subject:** Kirkland Tree Code Update

Chair Whitney and Houghton Community Councilmembers:

Thank you for giving the community an opportunity to provide input prior to the formal Public Hearing on the Tree Code Update. I am the President of the Central Houghton Neighborhood Association and have been following the tree code revision process and discussions since last fall. As a Neighborhood Association representative, I wanted to make sure that the revisions support the adopted neighborhood plans that were developed with much public input. As you know, each neighborhood and neighborhood plan are different and focus on different values. The vision statement for the Central Houghton Neighborhood Plan notes that “residents cherish and preserve the territorial views, including the expansive views of Lake Washington, Seattle, and the Olympic Mountains.” The Lakeview Neighborhood Plan includes similar language and expands on that concept with the “careful selection and placement of trees.”

I wanted to share the following thoughts before the formal Public Hearing:

- As a leader in our neighborhood association, I prefer the Tier 2 proposal that came from the working group which sets a minimum tree credit standard. I believe it offers more predictability by providing a minimum credit per acre system, compared to trying to shoehorn in a house on a lot. Adding a cap would provide even more predictability to both applicants, the neighborhood, and the city and take away so much discretionary review. It also would provide more ability for the builder to address other neighborhood plan and citywide goals.
- I would urge the Houghton Community Council to favor supporting replanting efforts that provide incentives for planting of healthy, native species. This could be accomplished through a replanting chart that gives more credits for native, diverse species, and lower number of credits for other, non-native trees that are not. This would help retain the character of our neighborhoods.
- As noted above, the Central Houghton and Lakeview neighborhood plans support protecting views – it is a key part of our neighborhoods identities. Staff’s proposal would require retaining trees in front, rear and side setbacks. What if a homeowners wants a view? What about being able to retain or replant in a better place on a lot? Or in a location that allows better use of the property while also preserving trees? The setback proposal from staff does not provide the flexibility to also allow individual homeowners discretion over use to enjoy views, yards, gardening, light, solar power, auxiliary dwelling units, etc.

- If a lot is so small or constrained that replanting to credits is unlikely, then I believe homeowners or developers should be able to pay a fee into a city fund. The fund could be used to plant trees near the site or in areas of the city that lack trees. This could be set up in a manner that the City could get 1½ or even 2 trees in return.
- Finally, the draft does not resolve the problem of homeowners being able to only remove two trees per year. The proposed changes by staff acknowledge that lots greater than 10,000 sf could remove more than two trees – I would guess that that only affects a small percentage of the residential properties in Kirkland. What if a homeowner wants to remodel or take on a landscaping project and they need/would like to remove more than two trees per year? Under the current or proposed ordinance this would not be allowed. I support the working group's proposal of taking banked credits. A homeowner could, for example, remove up to 6 trees in one year, taking future tree removal credits for the next three years. This could require the homeowner to submit some plans to the City so the project could be tracked using a system similar to the requirement to not cut down trees for new homes for the first five years.

Thank you for your time. If you have any questions or comments, please contact me at [larry.toedtli@comcast.net](mailto:larry.toedtli@comcast.net).

Thank you,

Larry Toedtli, President

Central Houghton Neighborhood Association

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**Deborah Powers**

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**From:** Alice L. Blanchard <ablanchardlaw@whidbey.com>  
**Sent:** Tuesday, July 23, 2019 9:18 AM  
**To:** Deborah Powers; Alice L. Blanchard  
**Subject:** Holmes Point Overlay

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Hello Deb:

I have been looking through the packet of materials that was sent out to me by Shaylyn Johanson on July 18th. Apparently there is a joint public hearing with the Houghton City Counsel and the Kirkland Planning Commission this coming Thursday, July 25th at 7:00pm?

I am concerned that although certain aspects of the proposed amendment to Chapter 95, on tree management and required landscaping do address tree pruning and removal on private property when there is no development activity, the proposal for the amendment of tree removal allowances which discusses the ability to remove more trees on lots 20,000 feet or greater still contains a lot of specific exemptions with respect to properties in the Holmes Point Overlay area. So, even though it appears that other property owners in Kirkland would benefit from the negotiations that we had stretching over a year and a half to address rights of property owners with larger properties, this still leaves Holmes Point property owners with the same old HPO and all the restrictions that go with it.

I believe you told me there are no specific plans to resume the discussions about amendments to the HPO, unless the Planning Commission gives direction for that to happen. Is that still true? I would appreciate getting a phone call from you, if you have the time.

Alice L. Blanchard  
360-221-7040 Office  
425-864-1264 Cell

## Deborah Powers

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**From:** Gina Clark <gclark@mbaks.com>  
**Sent:** Friday, July 12, 2019 1:20 PM  
**To:** Carter Bagg; John Tymczyszyn  
**Cc:** LaWana Quayle; Mike Smith; John Kappler; Larry Toedtli; Rick Whitney; rick.doylesmith.com; Scott Morris; goodwin; Jeremy McMahan; Deborah Powers; Adam Weinstein  
**Subject:** Thank you and a follow-up re: KZC 95

Good Afternoon, Planning Commission Chair and Vice Chair.

I want to thank you for giving the working group time last night during the study session. We are grateful for the exception and look forward to the 10-minute presentation at the public hearing.

I wanted to follow up with a few thoughts as we move forward to the public hearing with PC/HCC:

1. The direction given by PC to staff on May 23<sup>rd</sup> was to pursue “trees at all cost.” The Tier 2 setback requirement was proposed to the working group at meeting 11 of 14 with staff, after we spent the first 10 meetings working on details of a minimum credit per acre system. Is the city’s policy really “trees at all cost?” How does this mesh with city plans to provide Missing Middle Housing? Allow builders to build your “affordable” housing as you layer on more expensive regulation? Actually have room to build varied, quality product like duplex, triplex, cottage, carriage, DADU/ADU? Give homeowners use and enjoyment of their property? Provide for balanced code? Wouldn’t smarter policy be “right tree, right place?”
2. We are in agreement with Tier 1. But Tier 2 as proposed does four things:
  - It does not make code more predictable
  - It requires almost the same standards to save a significant tree (6” dbh in good health) as a Landmark tree
  - The city has not shown data, statistics or solid evidence that the setback proposal (as opposed to the credit system) saves that many more trees, or the right trees in the right places, to impose this kind of regulatory burden, cost, unpredictability, inflexibility or imbalance of policy on homeowners or landowners
  - Makes building housing more costly, time consuming and layered with more regulation and puts homeownership that much more out of reach
3. The working group is not that far off on any issue, as is seen on page 9 of the PPT. And if the working group is off on one or two issues, why does that automatically negate all of our work? Resign Planning Commission to rubber stamp staff’s proposal? You as the dedicated appointees are carefully selected to be the ultimately determiners of fact, logic, indecision, and disagreement. If after much time, collaboration, effort and work we simply can’t agree, it’s up to your expertise to weigh the evidence and decide. Not rubber stamp.
4. We are not the only two groups. As you know some residents prefer the views, yards, solar panels on their roof. Tier 2 as written strips that flexibility. A rubber stamp of staff’s plan silences those voices without full consideration.
5. The city is not including itself in any responsibility to protect municipal trees. Please refer to Kirkland’s [Urban Forestry Strategic Management Plan](#) which establishes values, vision and goals around tree retention, replanting and maintenance, education, community outreach, and staffing levels to support a healthy, sustainable, diverse canopy.
6. The ordinance is on the backs of homeowners and landowners. No other zoning area has to comply, only SFR. How can a citywide requirement to achieve 40% canopy be maintained without a citywide policy?
7. I’ve attached two handouts that were given on the tour. Please let me know if you have questions about them or the PPT.



The working group is available to meet with commissioners. We know you are very busy volunteers. But to date, only two commissioners have accepted one of our invitations to meet and only one was able to make a meeting. Please take advantage of all the community resources available to you. Three minutes at public comment is such a short amount of time for any stakeholder to educate, address your concerns, and have their position adequately heard.

Thank you again for all you do and for hanging in there with staff and the working group on this very complicated issue.

Take care,  
Gina and MBAKS/FHNA Working Group



**Gina Clark**

Government Affairs  
King County Manager  
Master Builders Association of King and Snohomish Counties

p 425.460.8224  
335 116<sup>th</sup> Ave. SE | Bellevue, WA 98004  
[mbaks.com](http://mbaks.com)

Find us on    

## Deborah Powers

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**Subject:** FW: trees regulations in regard to arborvitae

**From:** Margaret Bull [<mailto:wisteriouswoman@gmail.com>]

**Sent:** Saturday, August 04, 2018 8:37 AM

**To:** Planning Commissioners

**Subject:** trees regulations in regard to arborvitae

Aug 4<sup>th</sup>, 2018

Dear Planning Commission members,

I want to make a comment about the tree regulations. The prevalence of hedge-like planting such as arborvitae in Kirkland is alarming. It is used in place of or addition to fencing between properties and doesn't appear as a tree at all. In Kirkland we have a limit on the height and the distance from the curb a fence can be placed. Our urban and suburban neighborhoods are rapidly taking on a fortress like appearance. Hedgerows are growing into sidewalk spaces impeding pedestrian traffic. A fence has to be 15 ft from the curb. What is the regulation for a tree or hedge? As some of you know, I'm repeatedly complaining about the hedges between 62<sup>nd</sup> and 60<sup>th</sup> along 108<sup>th</sup> Ave NE as well as other ones along that main arterial. They might have been cute hedges 30 years ago but now are monster hedges. Why can't the city make people take them out if they grow right next to the edge of the sidewalk?

My other concern is that when developers or homeowners plant arborvitae and other 'trees' in a hedge-like row they don't consider the consequences to homeowners and neighbors in the future. I had neighbors that lived across a lane from my back fence plant arborvitae between the tarmac and the existing fence along the property line between our properties. Because it was technically their property I couldn't do anything about the growing height of these so called trees that crowded my garden by their extensive root system and wall like structure which blocked airspace and light. Many new housing developments have so little garden space that a variety of garden plants and trees don't fit. Since I live in an older home I have a beautiful garden so am definitely affected by this issue. It is one thing to have a 6 foot privacy fence along your back garden and a completely different thing to have a 10 foot hedge there. The developer doesn't care that it is a huge maintenance cost to the homeowner to keep arborvitae or other hedges pruned in height or width. Occasional over a 30 year period the neighbor would allow me to have a tree service trim the hedge (on their side of the property line) at my expense. It wasn't cheap so I couldn't do it often.

The city has many unenforceable tree regulations (applied to some people but not many others due to lack of oversight) regarding whether to allow developers and homeowners to prune or remove trees. But they seem weak on finding ways to force homeowners or developers to remove trees or hedge rows that were planted incorrectly or have grown too large along sidewalks. My neighbors had the right to plant the arborvitae along their lane even though it is on 'my side' of the road. But I don't feel the same should apply when a hedge is along a main arterial or pedestrian pathway. Developers are planting trees as required that are right in front of important street signs. Homeowners' hedges are also blocking important street signs and sidewalks. I don't feel that being fined is adequate. They should be removed. The city doesn't seem to have any way to enforce this especially since it may be a financial burden on a homeowner. On the other hand discouraging developers from planting arborvitae and other hedge-like trees as a tree requirement might go a long way to solving this problem in the future.

Sincerely,

Margaret Bull  
Central Houghton Neighborhood

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**Deborah Powers**

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**From:** Hopf Oswald, Kali <hopfoswk@oregonstate.edu>  
**Sent:** Tuesday, October 15, 2019 12:22 PM  
**To:** Deborah Powers  
**Subject:** Kirkland's Urban Forestry management plan

**Categories:** High Category

Hi Deb,

I am a Kirkland resident and was going over the UF management plan from 2013 and noticed you had a 6 year framework for modifications and review. I am wondering if you have been able to accomplish that this year? I also noticed your funding seems to be quite low in relation to other eastside communities at the time of the management plan writing, have you been able to gain better funding at this time? I used to be a street tree forest tech over at the city of Bellevue so I understand how bmp's and management plans can get lost in the shuffle of politics and funding. I am trying to determine why, even though the tax base is so large, the city of Kirkland seems to struggle with urban trees(especially street trees adjacent to private development) more than other communities. The comments from the public in the UF management plan have been particularly illuminating, and depressing, on how the public views the vital work that you guys are trying to do.

Any insights or current information you have available would be greatly appreciated!

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Thanks for your time!  
Kali Oswald

Tree issues – 2-lot short subdivision - Building Permit

This building permit was part of a 2-lot short plat, which Preliminary Decision required Trees 103, 105, 106, and 107 to be saved in a grove. Three trees in the other lot were similarly required to be saved in a separate grove. Where code specifies this lot requires 5 total credits, the grove required by this decision equals 41 credits (820% of requirement).

At building permit stage, 2 other retentions were required – 101 and 108.

Important note – “Saving a tree” goes beyond ‘not cutting it down’ – it also precludes digging, improvements, or any site work within a perimeter around the tree. So a ‘save tree’ has a much larger area of challenge than just avoiding the visible portions.

In this case, Trees 101 and 108 ‘squeezed’ the building platform from the south and the northeast. From the south, Tree 101 forced the home seven feet north, considerably reducing the rear yard. Improvements in the front were pushed away from the tree. Without showing both site plans, the easiest place to see this is that the walk between driveway and front entry was both shoved against the front façade (should have a planter between), and narrowed to two feet in width.

The home’s original position placed improvements outside Tree 108’s influence area. Our customers like paved patios adjoining the covered outdoor space – it’s a fixture of ours. At first submittal, one was proposed west of the ‘Covered Outdoor Living’ area, visible on the plan. After Tree 101 pushed the home north, the patio was deemed by Staff too close to Tree 108, necessitating removal of the patio.

In sum, Merit feels our product has been materially compromised by the forced changes, and these examples don’t capture all the challenges we see. We have lots with similar credit values where entire rear yards are given to the City for tree preservation (while requiring 1,000% + retention). Our clients want a lawn for their kids to play, in those cases we can’t give it to them. Those cases bring the grove easements, which are given to the City free of charge and in perpetuity.

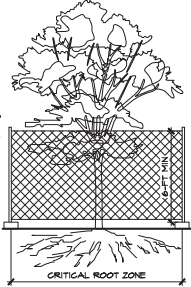
We are told credits are strictly a minimum. Once met, there are no standards of success. Here, 820% of code credits were required to be saved with the Preliminary Decision. At Building Permit, it was decided another 390% would be required on top of the 820% - at great cost. No analysis of any kind was performed to justify the additional requirements, and there is no upward limit of what might be required to save.

We know the required changes caused delays in schedule. We know the outcome is inferior from our viewpoint and our potential clients. Accurate figures are difficult, though on a similar lot with a lost back yard the sales price lost was estimated at \$50,000. Builders are accustomed to expensive requirements, but good faith requires those costs be tethered to legitimate policy. These conditions fail that test.

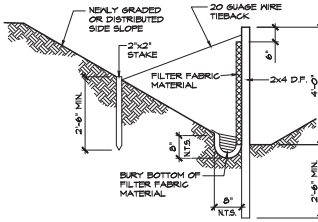
TREE PLAN (See KDC 95.35 for assistance)				
Integrated	I-Major	I-Minor		
Arboret report attached to permit (place corresponding tree tag #s on site plan)				
LOT'S DENSITY CALCULATION (rounded up to the nearest whole number)				
Lot Area (sq.ft.)	7200.06	/ 43,560 (sq.ft.)	X	30
			=	5
Req. min. tree density credits				

NOTES:

- MINIMUM SIX (6) FOOT HIGH TEMPORARY CHAINLINK FENCE SHALL BE PLACED AT THE CRITICAL ROOT ZONE OR DESIGNATED LIMIT OF DISBURSANCE OF THE TREE TO BE SAVED. FENCE SHALL COMPLETELY SURROUND TREE. INSTALL FENCE POSTS USING PER BLOCK ONLY. AVOID POST OR SINKS INTO MAIN ROOTS. MODIFICATIONS TO FENCE MATERIAL AND LOCATION MUST BE APPROVED BY PLANNING OFFICIAL.
- TREATMENT OF ROOTS EXPOSED DURING CONSTRUCTION FOR ROOTS OVER ONE (1) INCH DIAMETER DAMAGED DURING CONSTRUCTION SHALL BE CLEANED IMMEDIATELY TO REMOVE DAMAGED PORTION OF ROOT. ALL EXPOSED ROOTS SHALL BE TEMPORARILY COVERED WITH SHARP SAND TO PREVENT DRYING AND COVERED WITH SOIL AS SOON AS POSSIBLE.
- NO DISBURSING OF MATERIALS, VEHICULAR TRAFFIC, OR STORAGE OF EQUIPMENT OR MATERIALS SHALL BE ALLOWED WITHIN THE LIMIT OF THE FENCE. FENCE SHALL NOT BE MOVED OR REMOVED UNLESS APPROVED BY THE CITY PLANNING OFFICIAL. WORK WITHIN PROTECTION FENCE SHALL BE DONE MANUALLY UNDER THE SUPERVISION OF THE ON-SITE ARBORIST AND WITH PRIOR APPROVAL BY THE CITY PLANNING OFFICIAL.
- FENCING SIGNAGE AS DETAILLED ABOVE MUST BE POSTED EVERY FIFTEEN (15) FEET ALONG THE FENCE. SIGN TO BE MINIMUM INCH, AND MADE OF WATERPROOF MATERIAL.



1 TREE PROTECTION FENCE  
SCALE: NOT TO SCALE  
CITY OF KIRKLAND NO. CK-R-44



2 SILT FENCE CROSS SECTION  
SCALE: NOT TO SCALE

SITE PLAN

SCALE: 1" = 10'-0"

Red comments - from City  
Blue comments - Architectural change note  
Green comments - from Merit  
Dark blue comments - from Merit

TREE PLAN

TREE DENSITY CALCULATION		
Lot #	2	
Lot Size	7200.1	
Required Credits	5	
Tree No. / Existing Credits	103 8.5	
These 4 trees required to save overhanging canopies + grove	103 11.5	
41 credits (820% of code)		
Added at BSF	105 7	
101 and 108 also required to stay - 15.5 credits	106 9	
	107 13.5	
	108 12	
Total SAVED Tree Credits	61.5	
	61.5 credits	
Supplemental Planting Required:	1,230% of code requirement	

OWNER  
MERIT HOMES  
911 KIRKLAND AVE SUITE 200  
KIRKLAND, WA 98033  
PHONE: 425-605-0547  
CONTACT: GREG GRIFFIS  
EMAIL: Greg@MeritHomesInc.com

ARCHITECT  
TROY CLYMER  
ARCHITECTS NORTHWEST INC  
18415 - 142ND AVE NE / SUITE 100  
WOODINVILLE, WA 98072  
PHONE: 425 485 4400

ENGINEER  
MITCHELL ENGINEERING, INC  
7821 168th AVE NE  
RECHON, WA 98052  
PHONE: 425-861-7581  
CONTACT: MIKE MITCHELL  
EMAIL: MITCHELLENGINEERING@COMCAST.NET

LEGAL DESCRIPTION

LOT 2, TAFT

RECEIVED  
CITY OF KIRKLAND  
PLANNING DEPARTMENT  
JUL 19 2018

THE PLAT OF  
KIRKSMITH  
PARK  
VOL. 58, PAGE 5

LOT 2  
EMILY VANDENKART & JAC FUNT  
AX PARCEL  
#3901100010

City of Kirkland  
Reviewed by R Braun  
07/31/2018

ARCHITECTS  
NORTHWEST  
3805-AVENUE NE SUITE 200  
WOODINVILLE, WA 98072  
OFFICE (425) 485-4900 FAX (425) 487-4585  
CELL (425) 787-2585 WWW.ARCHITECTSNORTHWEST.COM

MERIT HOMES  
DESIGNED BY: DATE: 10/10/14  
TROY CLYMER  
DRAWN BY: DATE: 6/5/18  
JRA  
PROJECT MANAGER: TROY CLYMER  
REVIEWED BY: DATE: 6/5/18  
JRA  
LAYOUT NUMBER: 011-305

LEGAL DESCRIPTION  
LOT 2, TAFT

AO  
A9  
WWW.WOODVILLE.OFFICE  
FOR NUMBER  
W180015

Kirkland Tree Code Example  
 LaWana Quayle  
 DR Horton

### **Single Family Residential Project**

We are currently developing three adjacent single family lots in Houghton that DR Horton began processing in October of 2017. The project requires demolition of a Single-family home, a shop/garage, installation of frontage improvements (LSM), installation of wet and dry utilities, and tree retention. Homes were custom designed for the neighborhood and lot size, so not standard DR Horton product

I originally met with two planners and the city arborist/urban forester to discuss a comment from the ROW planner regarding redesigning a home to save a tree in the ROW regarding the LSM permit. I pointed out the tree would be near storm and water improvements. In response, the planner said we only needed to “wow” the sidewalk around the tree and ignored direct construction impacts to the tree.

I again reached out to the city to preemptively meet with one planner and the arborist/urban forester to ensure our upcoming building permit submittal would meet all requirements. I was told I needed an updated arborist report because the city urban forester didn’t like the format/layout of our report. I was also told I would need to resubmit at which point they would decide they wanted more changes. The planner also suggested we significantly reduce the size of the home to allow more trees to be retained. Grove status was not mentioned at that meeting.

All three lots of the project exceeded the tree retention credit requirements in the code by an **approximate factor of ten**. City staff said that didn’t matter; the size of the homes should be reduced to allow more trees to be retained.

After project redesign, building permit submittal and multiple permit comments from the city, I met with city staff including direct supervisors to clarify any issues, but did not receive a definitive answer as to why the project once again did not meet retention standards or why tree credits were not being applied. I was told that we now had a “grove” across two of the lots and needed to have the arborist update their report to evaluate the tree closest to a foundation.

As a result, we have now made over 4 design modifications to the house and site plans at a cost of approximately \$10,000 between consultant and staff time. We also had to contract the arborist for another visit and two report rewrites at a cost of approximately \$1500 - \$2000. The arborist report stated that one of the trees in the “grove” has a 20% chance of surviving past five years due to construction activity. City staff still required retention of the tree. The refusal to allow us to remove a tree extremely close (6’) to the foundation means we will spend double the cost in that area for utility and foundation trenching to use a smaller excavator and hand dig near that tree critical root zone.

We were then later told one of our building permits would not be issued until we had a legal description recorded for the grove. I asked to be educated where that was required in code and did not receive an answer from staff.

Overall, we are late on permit issuance by approximately 7 weeks, have made at least four (4) rounds of plan adjustments related to trees, expended unbudgeted costs, and cannot find in code the requirements we are being asked to comply with. We are simply looking for more certainty and transparency in the code and an application of the tree credit system in a fair and equitable way as it already exists in the code.

### **Plat Example**

We purchased a property that was developed as a subdivision in October 2018. The property is seven (7) lots with an average lot size of 7000 square feet.

During feasibility (due diligence before purchase) we were informed by the seller of a “grove” retained on the entire west property line. The retention of the grove would meet the retained tree credit requirement for the subdivision.

We have submitted for building permits. The city planner has since told us we are now required to plant trees on each lot to meet a tree credit requirement in addition to the existing grove, for a total of sixty-one (61) trees across seven (7) lots in addition to the existing grove. The lots are not big enough to support that many mature trees as they begin to grow and at full maturity several years out.

The cost for landscape design in addition to the trees will be approximately \$27,000. These fees were not accounted for in the original feasibility study. DR Horton still had plans to landscape the lots but not at that tree density level since it will be unmanageable for future homeowners and the lots are not capable of handling that many mature trees.

Essentially city planners have double applied the code to this project, with DR Horton meeting the retained tree credit requirement for the subdivision through the grove as well as through the additional planting of sixty-one (61) trees to meet a separate tree planting requirement. This discussion has caused delays to the permitting schedule and cost the developer additional unbudgeted money.

Unfortunately, when pressed to show which section of code requires the additional sixty-one trees despite grove compliance, we did not receive an answer from the city.

Again, what DR Horton would like to work with city staff, Planning Commission and Council is code language that helps define certainty of application and make requirements and application clearer for both applicant and city.





## Kirkland tree code summary (October 14, 2019)

Following is a summary of Kirkland’s current citywide tree ordinance ([Kirkland Zoning Code Chapter 95](#)) and the [amendments now being considered](#) by City officials. Also summarized below are recommendations that FHNA and the Master Builders Association of King and Snohomish Counties have submitted or may propose to Kirkland’s planning officials.

Note: This summary doesn’t describe the current Holmes Point Overlay ordinance ([Kirkland Zoning Code Chapter 70](#)) or [proposed revisions to that ordinance](#) (which the City Council consider after amending the citywide tree ordinance). Certain tree retention standards in the HPO are and likely will remain more stringent than those in the citywide tree ordinance.

### I. Tree removal and replanting during development

#### Current ordinance

*Tree removal and retention* – Any permit application to develop property must include a plan showing which trees will be retained, removed, and planted. Healthy “significant” trees (trees with trunks at least 6” diameter at breast height) should be retained “to the maximum extent possible” *if* they are clustered in groves or located in setbacks (front, back and side yards); healthy significant trees located elsewhere on a parcel must be retained when “feasible”. City staff can require minor adjustments to building locations as well as adjustments to the location of drives, paths, and utilities in order to save high retention value trees.

*New tree planting* – If, following development, the property will have fewer than 30 tree credits per acre (8 credits on a ¼ acre lot), the developer must plant new trees to meet the 30 credits/acre requirement. Tree credits are based on the trunk diameters of trees. For example, a 30” inch tree is worth 11 credits, a 16” tree is worth 4 credits, etc. New 4’ tall native trees and 2” diameter deciduous trees earn one credit each.

#### *Problems –*

*Retention:* Today, very few trees that aren’t in setbacks are saved, particularly on smaller lots, primarily due to building size, access requirements, and utility installations. Large trees are most vulnerable because their root structures may extend over a significant portion of a lot. And tree plans can be changed during what’s called “phased” review, allowing a builder to defer final retention decisions on some trees until site grading begins or individual homesites are designed. Trees may be removed – in accordance with regulations – during construction for many reasons, but neighbors often think they are being cut down illegally.

Developers are unhappy because they don’t know, when they purchase a property, which trees they’ll be required by the City to retain. This can lead to multiple review cycles by City staff, adding risk and delay to the construction process, as well as increasing the price of the home.



*Planting:* Some trees that developers plant don't add much to the tree canopy – e.g. arborvitae. Also, 30 credits/acre doesn't meet the City's overall 40% tree canopy cover objective.

#### Proposed ordinance amendments

##### *Tree Retention –*

*Landmark/Tier 1 trees:* FHNA and the builders agree that exceptional trees – Landmark or Tier 1 trees (30" trunk diameters or more) – must be retained unless doing so would prevent a builder from constructing a home of a minimum width or depth (e.g. 40' width at front) or running utilities to a home using best building practices. City staff support this proposal. The City estimates that about 11% of trees on private land in Kirkland qualify as Landmark or Tier 1 trees.

*Tier 2 trees:* City staff have proposed that healthy significant trees smaller than Landmark trees – Tier 2 trees – and located in setbacks should be retained subject to more slightly relaxed guidelines for home construction (e.g. a building's width can't be reduced below 50' in order to save a Tier 2 tree). City staff also want to retain discretion to flip building footprints and revise patio and walkway designs to save Tier 2 trees in setbacks.

*Integrated Design Plans (IDPs):* City staff have recommended that homebuilders submit IDPs, which will require that final tree retention plans be made available for public comment when development permit applications are filed. Revisions to these tree plans during the construction process would be subject to public comment and an appeal process.

*New Tree planting –* City staff continue to recommend planting as needed to achieve 30 credits/acre at the end of the development project.

#### FHNA comments on proposed amendments

*Landmark/Tier 1 Trees –* We strongly support more protection for Landmark trees, even though we most of these trees will not be saved given both current zoning (smaller lots) and the physics of constructing homes on wooded lots (homes occupy space where trees previously stood). We think the definition of a Landmark tree should be expanded to cover more trees. We estimate an expansion of the Tier 1 definition to cover trees with trunks of 27" diameter or greater would extend the highest degree of tree protection to 16% of Kirkland's trees. The builders prefer a Landmark tree definition that covers only trees with trunk diameters of 30" or more.

*Tier 2 trees –* FHNA and the builders initially proposed that Tier 2 tree retention standards apply to any Tier 2 trees, wherever located on a lot, but only up to 50 tree credits/acre. As noted above, City staff prefer retaining all Tier 2 trees if they are in setbacks, subject to several limitations. The builders think that the staff proposal is open to interpretation, leads to unpredictability, and compromises home design. FHNA has supported the staff's recommendation but recommends that be refined to include objective and reasonable standards that will make the retention process more efficient and predictable.

*Integrated Development Plans –* FHNA advocated successfully in 2017 for the adoption of IDPs in the Holmes Point Overlay area. We support requiring IDPs throughout the City. The builders have reservations about IDPs, noting that tree plans are prepared before site work begins, and some trees marked for retention might need to be removed due to development issues that couldn't be foreseen. We're encouraging builders and staff to discuss solutions that enable some IDP revisions during construction without undermining the integrity of an approved tree plan. However, any proposal to

remove a Tier 1 tree that was originally marked for retention should be subject to public comment and appeal.

*Planting* – City staff propose to retain the 30 tree credit/acre standard, saying that a higher tree density standard could result in over-plantings on small lots. FHNA and the builders support lifting the standard to 50 credits/acre because some newly planted trees will die or be removed by owners before they mature. FHNA recommends that a meaningful portion of new plantings consist of native species, notably conifers, to preserve local character. City staff, FHNA and builders agree that certain species – such as arbor vitae – shouldn't qualify for planting credits.

## **II. Tree removal by homeowners (not as part of property development)**

### Current ordinance

A homeowner may remove two healthy significant trees per year without a permit, up to the last two healthy significant trees on the property. Additionally, trees can be removed if shown to be hazardous. Trees in the public right-of-way may be removed only with a permit. Taking off more than 25% of a tree's crown is treated as a removal.

Owners of wooded lots larger than 35,000 square feet can also remove trees based on a forest management plan (designed to permit removal of overgrowth but preserve wooded areas perpetually).

*Problems* – Several homeowners want a higher tree removal allowance for larger properties, on the theory that they have more trees than smaller parcels. Some owners have also sought permission to remove more than the prescribed annual quota as part of a landscaping plan that contemplates replanting.

### Proposed ordinance amendments

The proposed tree code revision would allow Tier 2 trees to be removed without a permit as follows:

Lot size	Annual Quota of Tier 2 tree removals with notice
Up to 10,000 square feet	2
10,000 – 20,000 square feet	4
20,000 square feet or greater	6

The proposed amendments would not allow the removal of Landmark trees except with a permit. Code language concerning the removal of hazardous trees and right-of-way trees would not change.

### FHNA comments

We don't oppose adjusting the tree removal quota by lot size, but the minimum threshold should also be adjusted, so that larger lots larger should retain at least four to six trees (absent a permit to remove more). We support protecting Landmark trees from non-permit removals; if such trees weren't protected, homeowners on the verge of selling their properties would be encouraged to cut down those trees, frustrating efforts to require developers to retain them.

### III. Other issues

The following issues don't fall neatly into proposed tree ordinance amendments but are items that FHNA would like the City address as part of an effective urban tree canopy program:

#### Right-of-way and public trees

The City should make a greater effort to retain right-of-way trees. It appears that City standards for curbs and sidewalks are often applied without regard to tree retention. FHNA and the builders agree the City should also invest more robustly in replanting on City-owned property like parks, promoting community education and outreach programs, and enhancing staff resources collect data and expand tree programs.

#### Enforcement

*Inspections* -- Better enforcement of the Kirkland tree code will improve tree retention. The City recently allocated funds for an additional inspector, but FHNA believes more properly trained staff are required to ensure that rules are observed. In particular, FHNA recommends that developers be required to schedule an inspection before property clearing and grading begins.

*Protective fencing* – The tree code currently requires fencing around protected trees so that the soil over their root systems won't be compacted by heavy equipment. Builders assert, however, that fences must be moved during construction for a variety of legitimate reasons. FHNA suggests fence movement be permitted only to the extent justified in the developer's tree plan, which should specify mitigation measures (e.g., load dispersion) to minimize tree damage.

#### Penalties

Penalties for tree ordinance violations aren't set out in the ordinance itself; instead they're listed in the City's Municipal Code. The staff favor strengthening penalties for tree infractions. FHNA supports doing so as soon as possible.

#### Transparency

The IDP process can be a useful tool for neighbors to comment on a tree retention if they can easily access the plan and associated materials. The City should put these documents on its website so that residents don't have to go to the City Hall to view them.

#### Completion bonds

Several development projects in Kirkland have stalled after trees have been cleared, leaving bare sites susceptible to slides. FHNA believes that subdivisions or projects on steep slopes should not be permitted unless a replanting bond is posted – so that if work is suspended for a significant period, the City can install erosion barriers and landscaping.

#### Accessory dwelling units (ADUs)

The City is revising its rules to encourage the construction of ADUs as part of a broader campaign to promote affordable housing in Kirkland. FHNA supports that goal, but we are concerned that more trees will be lost if ADUs are exempted from current lot coverage requirements in the current zoning code.



May 30, 2019

Honorable Rick Whitney, Chair  
Houghton Community Council  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

RE: KZC Chapter 95: Tree Protection Ordinance

Dear Chair Whitney and Houghton Community Council:

The Master Builders Association of King and Snohomish Counties (MBAKS) and the Finn Hill Neighborhood Association are pleased to provide joint comment regarding the Kirkland Zoning Code, Chapter 95, Tree Protection Ordinance (tree code).

The Master Builders Association of King and Snohomish (MBAKS) and the Finn Hill Neighborhood Alliance (FHNA, collectively the working group) have been working collaboratively, at the request of City leadership, for the last 5 months to support the City in amending its tree protection ordinance. Over the last two and a half months, City staff has also dedicated their time to meet with our working group to try to develop a unified proposal for broader community input and review and consideration by Planning Commission, the City Council, and the Houghton Community Council.

It has always been the working group's intent to find commonality and balance within our top priorities. MBAKS's priorities are to construct a variety of housing at a range of price points for the residents of Kirkland and to do so in compliance with tree retention rules that are predictable and objective. The FHNA's priorities are to preserve existing health trees and, in particular to retain large, grand trees that define community character and assist the City in fulfilling the objectives of its Climate Action Plan of 2009.

We found, however, that we could not do that within the existing code, as written. That is why, instead of simply drafting a memo stating where our two groups could or could not align, we started over with fresh language and ideas in some significant areas of the code. It was, we recognize, unexpected, imperfect, and challenging for staff.

With our priorities identified, we agreed to primarily balance the obvious: housing and trees. We did this by first defining what kind of tree the FHNA would want to give top



priority in saving. We selected 30" dbh wide trees and larger, designating them as "Landmarks", and clusters of three or more trees containing at least one 30" tree or a cluster of five or more trees with one 24" dbh tree called "Groups," priority protection. These trees were designated Tier 1 trees.

In exchange for preserving Tier 1 trees, the builders agreed to significant concessions as to where and how to construct a home that might be in competition for space with a Tier 1 tree. To balance those significant concessions, the FHNA agreed that other trees, Tier 2 trees, would be given less protection with less builder concessions. We loosely identified Tier 2 trees as "Significant Trees," any healthy tree 6" dbh wide and larger.

The working group also significantly increased the credit system with 45 to 50 credits per acre, a considerable increase from the current credit system, in hopes this would help meet the City's stated goal of 40% citywide tree canopy. Once these onsite credits were achieved, remaining trees could be removed. If it would be practicable to save trees within the interior of a lot (i.e. not just in the setbacks), a builder would be incentivized to do so by earning tree credits, but, once the requisite retention credit threshold can be met, the builder would have more flexibility to remove trees in setbacks as needed to accommodate utilities, building foundations or other improvements. The FHNA accepted this proposal, balancing it with Tier 1 protection and an overall increase in tree credits.

Using the tree credit system, the working group also agreed that one "super" tree (Landmark) could not provide all the credits for a lot, so tree credits were capped at the number of credits that were granted to a Landmark tree.

The working group's balance was carefully negotiated, intentional, and the product of true compromise – neither side came out whole, but both were able to preserve their top priority. And we did our best to reach this agreement in the absence of solid City statistical data or research on trees, without truly knowing, or perhaps understanding, the City's vision or goals for prioritizing and retaining trees, and without, as MBAKS believes there should be, a holistic and systemic plan that also considers retention and replanting efforts on public lands and in commercial zones, for example.

On May 13<sup>th</sup>, staff indicated a desire to change the MBAKS/FHNA framework regarding Tier 2 trees, shifting away from credits, and retaining trees in rear, front and side setbacks. City staff concluded that retention of trees in setbacks – a continuation of current policy – would preserve more trees than the MBAKS/FHNA framework and that neither approach significantly enhanced the preservation of Landmark trees.

Both FHNA and MBAKS are evaluating staff's analyses. The working group does not necessarily disagree with the setback system, and as a general matter, FHNA supports outcomes that enhance tree retention. However, FHNA agrees with MBAKS that an objective scoring system provides predictability, something that is sorely missing from





the current code. MBAKS says the current code is not easy to implement or interpret by applicants or staff, and results in several rounds of expensive and time-consuming review that adds to the costs of projects and hence, the overall cost of each home. MBAKS also notes that using an objective scoring system like credits treats properties equally and does not burden heavily treed properties unnecessarily compared to their neighbors with fewer trees.

On its face setback protection sounds perfect since building footprints aren't allowed in setbacks. But, for example, a "setback tree" might only be 1" inside the setback, but its Critical Root Zone (CRZ) can be far outside, a non-disturbance zone that can have considerable impacts on construction or placement of a building pad.

Or consider a side yard setback that might only be 5' wide. Preserving trees in such a narrow corridor could significantly hamper or eliminate side yard use. Five feet is not a lot of space. If trees are retained in the 5' they could limit ingress and egress from front to back, storage, and maintenance. The working group would like to ensure the City considers these issues, especially on smaller or more challenging shaped sites when drafting code language for preserving Tier 2 trees.

As with any code, the language will determine predictability and usability so individual planners are not determining if a Tier 2 tree, its CRZ, canopy, etc., is "in" the setback. In addition, the draft language will very much rely on proper definitions like what is a Tier 2 tree, what is required to retain them, and what property use guarantees developers get for Tier 2 tree retention.

In sum, the working group looks forward to seeing the draft ordinance. We hope it will balance tree preservation with the exigencies of home building in a manner that will enhance practical and predictable results. But there's a lot of work to complete. Below is a list of what we believe are some top issues that still need to be resolved.

- 1) Requirement for IDP: MBAKS would like to see it remain an option; the FHNA believes there are benefits to citywide application.
- 2) Homeowner provision to cut two trees per year: The working group proposed allowing borrowing against two additional years (6 total at one time) to cut trees. It's been stated there is no available tracking system to do this, but there is a permit tracking system for development permits that cannot be granted within a year of tree removal. Is there a way to integrate this new provision?
- 3) Critical Root Zone/Limits of Disturbance: Guidelines regarding permissible incursions within the CRZ/LOD need to be clarified.
- 4) Replanting schedule: Replanting trees to 'make up' credits for trees that couldn't be retained. Staff is willing to entertain the replanting schedule and credits provided in the working group draft.
- 5) Protective fencing: FHNA favors stricter rules to prevent "fence creep" during development. But MBAKS asks what "immovable" fences would look like.



Providing fencing to the dripline means not only making room to save the tree but room for the fencing as well. Many times, if you fenced everything to the dripline, you can't move equipment around on the property if you have trees in side yards. There are definitional and practical challenges to the fencing provisions that remain.

- 6) Predictability model: Establish defined conditions that may be imposed to save trees.
- 7) Tree retention on SFR: What is the City's obligation to increase canopy? How will multi-family or commercial sites be reviewed?
- 8) Determine the current definition of grove: The working group believes the current definition should not be retained. The working group has a redefined Tier 1 "Group," distinctive from current definition of "grove." The working group proposed two types of tree groupings – a group of three trees that contains at least one 30" dbh Landmark tree or a group of five trees that contained at least one tree with a minimum 24" dbh tree. The goal was to avoid required retention of a "grove" of unsatisfactory trees just because their canopies touched (an opportunity for application of right tree, right place). If it is a grouping, what is a reasonable method of protection? The builders are strongly opposed to easements.
- 9) Define 'weed trees': Alders, cottonwoods, anything invasive not deserving of protection. A complete list of unprotected trees is needed. We believe we have agreement here.
- 10) Clarification of Tier 2 Tree Health: In the draft language to come, ensure clarification of Tier 2 tree health as good or fair, and under what conditions.
- 11) In-Lieu Fee Payments: MBACKS believes that if retention and/or replanting on site is impossible or infeasible in certain circumstances, an in-lieu fee could be paid to the City Tree Fund to help with replanting or tree retention programs. FHNA would like to hear more discussion about this proposal. MBACKS and FHNA have been advised that a mitigation fee may not be legal. MBACKS believes some other jurisdictions do allow this type of payment in certain circumstances and MBACKS would like to request further exploration of this option.
- 12) Maintenance bonds: FHNA supports a requirement for maintenance bonds in connection with large development projects that require significant replanting or special measures to retain trees threatened by construction activity. MBACKS is generally opposed to bonding measures. The issue warrants further discussion.
- 13) Right of way trees: Both FHNA and MBACKS note that many trees in rights of way are lost to accommodate improvements required by the City's Public Works Department. Standards for tree retention by City departments should be more clearly specified.

Finally, two requests. We would like to invite the Houghton Community Council to tour a development site. We believe this will help you better understand the process of site selection, planning, design, grading, site contouring and house siting, utility placement, LID requirements, FAR and lot coverage, setbacks, and tree protection. We