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THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
Cornel Termure	
Appeal of Tree Permit Denial	
TRE24-03938	

OVERVIEW

Mr. Termure’s appeal of the denial of a tree removal permit is denied. The City correctly denied Mr. Termure’s after-the-fact permit application to remove a dogwood and pine tree located on one of his properties.

A major part of Mr. Termure’s appeal was the argument that his after-the-fact application should be held to a lower evidentiary standard than those filed before tree removal. Adoption of such a practice would encourage people to unlawfully remove trees without permits. It would also be unfair to those who follow the law and apply for permits as required before they remove trees. Mr. Termure’s application is held to the same burden of proof as those filed prior to tree removal. For some applications, this could mean it’s not possible to meet the burden of proof with the evidence that’s available. That is one of the consequences of illegally removing trees prior to applying for a permit.

The City denied Mr. Termure’s after-the-fact tree permit application for removal of a pine and dogwood tree because their removal exceeded the number of trees authorized for removal. Mr. Termure’s defense is that removal was authorized because both trees qualified as hazard trees. Mr. Termure believed these trees jeopardized a home he owned as well as tenants of the home. The pine tree was allegedly hazardous due to a codominant union with a large horizontal branch and subject to high wind exposure. The

1 dogwood tree was allegedly hazardous due to tree decay. Both trees were in falling  
2 distance from the single-family home owned by Mr. Termure.

3 Mr. Termure presented a written assessment of a certified tree arborist who concluded  
4 that the pine tree was in imminent risk of failure. He also submitted a letter from a tree  
5 cutter that the dogwood tree was in risk of failure due to tree rot. The tree cutter included  
6 web links to a couple articles discussing the limited life span of dogwood trees. The  
7 arborist had 7 years experience inspecting over 5,000 trees. The tree cutter had 21 years  
8 experience removing rotted trees.

8 Mr. Termure presented no witnesses at his appeal hearing. Tim Coye, the City's  
9 Development Review Arborist, wrote the staff report. Mr. Coye could not attend the  
10 hearing due to illness. Consequently, the City presented the testimony of another of its  
11 arborists, Anna Heckman.

11 As noted in Mr. Coye's staff report, Mr. Termure's assessment was questionable given  
12 that he provided no reason why the hazard of the pine tree couldn't be rectified by  
13 removing the large unbalanced branch at issue. The arborist's assessment was further  
14 questionable because of its conclusion of "imminent" tree failure. Mr. Coye noted in his  
15 report that to qualify as imminent there would have to be a defect of far greater  
16 significance than a problematical branch. Mr. Coye found the tree cutter's assessment to  
17 be unfounded because trees live for years with the kind of decay depicted in a stump  
18 picture provided by Mr. Termure. Mr. Coye also wrote that Mr. Termure was unable to  
19 provide pictures or any physical evidence beyond the pictures of a stump for the  
20 dogwood tree. Mr. Coye noted that with timely filed applications before tree removal,  
21 City staff are able to access trees and/or review pictures depicting tree condition.

20 Mr. Termure's tree witnesses are not found highly credible given their absence at the  
21 hearing, motivation for bias and absence of qualifications. Their motivation for bias is  
22 two-fold in assessing tree hazards. First, they have a financial interest in finding tree  
23 defects since such findings persuade property owners to hire their services to remove  
24 trees. Second, such findings help them avoid substantial civil penalties for failing to  
25 follow City regulations and/or personal liability for failing to advise on how to comply  
26 with City tree regulations. Both Mr. Coye and Ms. Heckman brought up numerous  
27 reasons to question the accuracy and validity of Mr. Termure's tree contractors. Since  
28 the contractors were not present for cross-examination, there was no opportunity to  
29 determine whether the shortcomings in their assessment were the result of bias or  
30 justifiable circumstance. Since Mr. Termure has the burden of proof, the balance of  
evidence favors the City and the record is found lacking in preponderance or substantial  
evidence to justify a finding of hazard trees.

1 Throughout this proceeding Mr. Termure emphasized the innocence of his actions. He  
2 identified that he was unaware of the City's permitting requirements. He acknowledged  
3 that he has done other development work in the City requiring tree permits. He explained  
4 that as with this case he just relied upon his contractors to tell him what permits are  
5 required. Mr. Weinstein, the City's planning director, met with Mr. Termure several  
times to work out the tree violations and trusted that "he had good intent."

6 Mr. Termure's alleged lack of awareness of City tree standards and the good faith of his  
7 conduct is not relevant to the issue of this case, i.e. whether the removed trees were  
8 hazard trees. His culpability will be relevant to the amount of the fines assessed against  
9 him if the City issues a Notice of Tree Fines against him. Part of Mr. Termure's good  
10 faith conduct depends upon how much he relied upon the expertise of his tree contractors.  
11 Any contractors who removed the trees for Mr. Termure can be added as responsible  
12 parties to a Notice of Tree Fines and be made to share in the fines otherwise assessed  
solely against Mr. Termure. It is up to Mr. Termure to provide the information the City  
needs to add more responsible parties to any future Notice of Tree Fines.

### 13 TESTIMONY

14 A computer-generated transcript has been prepared for the hearing to provide an  
15 overview of the hearing testimony. The transcript is provided for informational purposes  
16 only as Appendix A.

### 17 EXHIBITS<sup>1</sup>

18 Mr. Coye's March 18, 2025 staff report along with attachments 1-5 were admitted during  
19 the March 25, 2025 hearing.

### 20 FINDINGS OF FACT

21 1. Appellant/Removal Site. Cornel Termure is the Appellant. He owns the  
22 property that is the location of the tree removal site, 13506 132<sup>nd</sup> Ave NE, Kirkland,  
23 WA 98034.

24 2. Tree Removal. A 30" DHB pine tree and an 18" stump diameter dogwood tree  
25 has been removed from the removal site. Mr. Termure doesn't contest that he had the  
26 trees removed.

27  
28  
29 <sup>1</sup> The City's staff report was formerly admitted without objection. Ex. 2 and 3 were presented without  
30 objection. Judicial notice is taken of Ex. 4 as legislative history. The conclusions arising from Ex. 4 can  
be taken without that document, as the Fire Chief testified that the sprinkler requirements are based upon  
a balancing of risk verses building cost.

1 3. Tree Removal Permit. Mr. Termure filed an application for a tree removal  
2 permit for the two trees identified in Finding of Fact No. 2 as well as three apple trees  
3 on May 17, 2024 for the pine tree with a June 11, 2024 revision to add the dogwood and  
4 apple trees. The application was denied as to the pine and deciduous trees by decision  
issued July 12, 2024. Att. 7.

5 4. Appeal. Mr. Termure filed the subject appeal on March 25, 2025. Mr. Termure  
6 was authorized to file a late appeal by Hearing Examiner Final Decision dated  
7 December 16, 2024, File No. COM24-00187.

8 5. Trees Not in High Risk of Failure. Substantial and/or preponderance of  
9 evidence does not establish that the subject pine and dogwood trees have an extreme or  
10 high risk of failure.

11 The facts identified in the Overview section of this decision are adopted as findings of  
12 fact. In addition to the Overview facts, the record shows that the City witnesses were  
13 more qualified to assess the condition of the Termure trees. Ms. Heckman, who was  
14 available for cross-examination, is both a certified master arborist and “TRAQ<sup>2</sup>  
15 qualified.” TRAQ qualified arborists are certified to do tree failure assessments. Mr.  
16 Termure’s witnesses were not TRAQ certified or master arborists. Mr. Termure’s  
arborist is an International Society of Arboriculture (ISA) certified tree arborist, as is  
Ms. Heckman.

17 Mr. Termure’s arborist filled out an ISA Basic Risk Assessment Form, Att. E for the  
18 pine tree. As testified by Ms. Heckman, arborists must be TRAQ certified to fill out  
19 such forms. Ms. Heckman testified that to the best of her knowledge Mr. Termure’s  
20 arborist has no such certification. Tr. 16. She further testified that the arborist’s lack of  
21 TRAQ certification is evident by how the form was improperly completed. Id. As noted  
22 in pages 7-8 of the staff report, the Form included an incorrect entry for the anticipated  
23 time period for failure (responding “1 visit”) and identified an “imminent” risk of  
24 failure with no corroborating evidence. The staff report notes that aerial photographs  
since 2005 showed that the pine tree had survived in its allegedly “imminent” large  
branch condition for several years.

25 The staff report also noted that the type of trunk decay shown in the photograph, Att. 2,  
26 of the dogwood stump does not establish a risk of tree failure. As noted at p. 8 of the  
27 staff report, “[m]any trees live for years with some amount of heartwood decay without  
28 issue and the amount of decay present in the stump does not indicate that the tree would  
29 have been structurally compromised.” Ms. Heckman’s mirrored the findings of the

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30 <sup>2</sup> TRAQ is an acronym for Tree Risk Assessment Qualification. See Staff Report, p. . 5

1 staff report, testifying that “decay alone does not determine risk of a tree.” Tr. 17. She  
2 noted that there are a lot of trees out there with more significant decay. Tr. 27. She  
3 noted that aerial photos taken over several years showed the dogwood and pine trees as  
4 healthy. Tr. 17.

5 Given the conflicting evidence and lack of attendance of Mr. Termure’s witnesses to  
6 defend against the shortcomings identified by the Mr. Coye and Ms. Heckman, there is  
7 insufficient evidence in the record to conclude that the pine or dogwood trees were in  
8 any significant risk of failure.

## 9 **Conclusions of Law**

10 1. Authority of Hearing Examiner. KMC 145.60(4) provides that appeals of Type 1  
11 permitting decisions such as tree removal permits are to be heard by the hearing  
12 examiner.

13 2. Pine and Dogwood Trees Don’t Qualify as Hazardous. To qualify as a hazard  
14 tree, a tree must meet three criteria, one of which is determinative in this case requiring  
15 as follows:

16 **KZC 19.10(17)b:** *Hazard Tree – A tree/tree part assessed by a qualified*  
17 *professional arborist as having an extreme or high overall risk rating using the*  
18 *ISA Tree Risk Assessment Qualification (TRAQ) method in its most current*  
19 *form, as applied in KZC 95.25, that meets all the following criteria:*

20 *1) A tree with a combination of structural defects and/or disease which*  
21 *makes it subject to a high probability of failure; ...*

22 As determined in Finding of Fact No. 5, Mr. Termure has not established that the trees  
23 have a high probability of failure. Consequently they do not qualify as hazard trees.

24 3. Permit Denial Sustained. Mr. Termure does not contest any finding made in the  
25 City’s tree denial decision, Att. 1, except that the trees he removed qualify as hazard  
26 trees. Since the trees do not qualify as hazard trees, he was prohibited from removing  
27 the trees under the tree limits set by KZC 95.25.1. For these reasons, the City properly  
28 denied Mr. Termure’s May 17, 2025 tree permit application along with its June 11,  
29 2024 revision in its decision dated July 12, 2024, Att. 1 for removal of the pine and  
30 dogwood trees.

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**Decision**

The City’s July 12, 2024 permit decision for TRE24-03938, Att. 1, is sustained. The City correctly denied Mr. Termure’s application to remove the pine and dogwood trees identified in this decision.

ORDERED this 8<sup>th</sup> day of April 2025.

Phil Olbrechts  
City of Kirkland Hearing Examiner

**Appeal and Valuation Notices**

This decision is a final land use decision of the City of Kirkland per KZC 145.105(4) subject to appeal to superior court as governed by the Land Use Petition Act (LUPA), Chapter 36.70 C RCW. LUPA requires judicial appeals to be filed and served within 21 days as specified in RCW 36.70C.040.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

## Appendix A

March 25, 2025 Hearing Transcript

Tree Permit Appeal: TRE24-03938

*Note: This is a computer generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. A recording of the hearing is available from the Planning Department should anyone need an accurate rendition of the hearing testimony.*

Examiner Olbrechts: (00:00:00):

Okay, got my recorder going too. Is back up. So welcome everybody on this beautiful afternoon. Oh, turn the microphone. Got one of those. Okay. Alright. Can you all hear me now? Yeah, perfect. Okay. Alright, so for the record, it's March 25th, 2025, 2:00 PM I'm Phil Albright's, hearing examiner for the City of Kirkland. This afternoon we're holding a hearing on an appeal of a denial of a tree removal permit. This is file number TE 24 dash 0 3 9 3 8. I see the appellant is here. Mr. Er and Mr. Coy. Mr. Clark, can you waive your hand or just so I know who you are out there?

Ms. Croll: (00:00:37):

Hello, Mr. Albrook, this is Stephanie Kroll, senior assistant city attorney. Mr. Coy is very ill.

Speaker 3 (00:00:44):

Oh, okay.

Ms. Croll: (00:00:44):

It has been for a little while here and did not make it back to work yet today, but we do have another certified arborist here from the city staff. Her name is Anna Heckman if you need to hear from an arborist

Examiner Olbrechts: (00:00:59):

Sir. Okay, perfect. Alright, sounds good. Alright, well Mr. Tamir, this hearing's a little different from the last one. The last one was an appeal of a notice of violation. In that case, the city had the burden of proving the violations. In this case it's dealing with a permit application to you as a permit applicant have the burden of proof and that means you get to go first and last essentially in this proceeding. But you do have the burden of establishing that you meet the criteria for removing the trees. And I think Mr. Coy had put together a really good staff report. I hope you've had a chance to look that over. That kind of explains essentially what you have to prove here, which is that the trees you removed essentially were hazardous or nuisance trees and that's all laid out in the staff report pretty well.

(00:01:42):

I'm glad he did that. So it kind of makes it easy for all of us to figure out what to focus on. So at this point, Mr. Trimer, do you plan on bringing any witnesses today other than yourself and your spouse? Is that going to be it today? Just the two. Just you two. Okay. Alright. And did you have any documents you wanted to put in the record or did you want to present them as you went along with your presentation? We go along as you go along. Okay, sure. Alright, well come on up to the podium then. And was there anything from the city before we get started or any preliminary matters? No sir. Okay. Yeah, I think it's

pretty straightforward. So Mr. Tamir, just go right ahead up to the podium. Let me swear you in real quick. Just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding? Yes. Okay, great. Alright then go right ahead

Mr. Termure: ([00:02:28](#)):

Before we start, do you mind before we were to sit down along with my wife as we were going through the report so we can

Examiner Olbrechts: ([00:02:33](#)):

Okay, that's fine.

Mr. Termure: ([00:02:35](#)):

She can explain it better than I do.

Examiner Olbrechts: ([00:02:37](#)):

Alright. Okay. Alright. Mr. Mrs. Tamir, I'll swear you in as well just to get that all done. Do you swear affirm to tell the truth nothing but the truth in this proceeding? I do. Perfect. Alright. Okay, go ahead Mr. Turner.

Ms. Croll: ([00:02:55](#)):

Mic microphones please Just push the button and the light will turn green.

Mr. Termure: ([00:03:13](#)):

Sorry if I speak a little bit of Romanian her because we speak Romanian back at home

Examiner Olbrechts: ([00:03:18](#)):

And

Mr. Termure: ([00:03:18](#)):

English is my second language for her too, but she's been here since she was a kid. So this since I feel depression. So I did look over the report that Mr. Coy put on and there's a few things that looks like it's just one side opinion and I want you to look at the other. So I have an ABU information and the tree card company and tenant all testify. I witnessed that the tree were in bad condition and then I've never been through this. I don't know where to start, how to prove it, but I took notes on the Mr. Coys report and we can go along and share some information that I put together.

Speaker 3 ([00:04:10](#)):

Okay,

Mr. Termure: ([00:04:20](#)):

On page eight two over eight it says Mr. Tamir submitted an after the factory removal permit application and then

Mrs. Termure: ([00:04:38](#)):



I can read. So we just wanted to clarify a few things on here. The first one being that towards the end of that statement it says that curiously somewhat misleading the letter that was written that was provided a handwritten document had been prepared over a year after the tree had already been removed. Although curiously and somewhat misleadingly, it was written as if it had been prepared before the tree was removed. We took a little offense with that because the letter was dated and it was dated 2024. So I'm not sure why they would make it look like it was misleading that it was written earlier. And also at the same time we wanted to make the comment that it seems like the city is insisting on providing incorrect information. The risk assessment and the note provided were to reinforce the assessment that was actually made on February, 2023, which the city has, it appears to us that is the city that's actually misleading here.

Mr. Termure: (00:05:46):

Which last line? This one was not involved, which I thought they had it.

Examiner Olbrechts: (00:05:51):

You're saying that's the February, 2023

Mrs. Termure: (00:05:54):

Document.

(00:05:55):

That was based what we had based our decision on. So the situation was as follows, the tenant called an arborist, he initiated the whole process. Technically he was afraid of the street that was on there. He contacted this arborist to get a quote. The guy came in, did his thing, did the tree removal contract and documented his concerns and said that yes, this needed to be removed. He then contacted us and told us, Hey, I'm afraid of this tree, I want to take it down. I contacted an arborist, this is what he said, this is going to be the cost. My husband at that time said, okay, I see the concern. He saw the tree. Okay, we agreed, but we didn't end up going with that arborist because his fees were high. So my husband contacted another tree cutter that came in. He himself saw the trees, agreed that they were hazardous and then did the tree removal.

Mr. Termure: (00:07:04):

And then also I talked to the tree cutter to what's his name, providing information that he stated that the trees were wrong based on his assessment. And I have a letter from after that trying to get more information and proof on that. And I have the letter submitted in here for his it's

Mrs. Termure: (00:07:25):

And he too stated, made a letter defending that action, that ordinance.

Examiner Olbrechts: (00:07:32):

Okay. Do you have copies of those documents or those are your only

Mrs. Termure: (00:07:34):

Yes, those should also be

Examiner Olbrechts: (00:07:35):

Pardon.

Mrs. Termure: (00:07:35):

They were also all added into the file that Mr. Coy submitted. All of those document are in there.

Examiner Olbrechts: (00:07:42):

Did I have the copy of Mr. KO's staff report? Did I get a copy of their documents? I couldn't find it when I was looking for it

Ms. Croll: (00:07:49):

To Mr. CO's report.

Examiner Olbrechts: (00:07:50):

Oh, okay.

Ms. Croll: (00:07:51):

I think you'll find Mr. Randall's

Examiner Olbrechts: (00:07:55):

Letter. Letter at

Ms. Croll: (00:07:57):

Page E

Examiner Olbrechts: (00:07:58):

23. Okay. Okay.

Ms. Croll: (00:08:01):

And the evergreen tree estimate that they referred to at e page 19.

Examiner Olbrechts: (00:08:09):

Okay. Alright, well, oh yeah, there it is. Just I take it as the S do you have any problem with Mr. Cory's report and all the attachments coming into the record? Any objections?

Speaker 3 (00:08:20):

No.

Examiner Olbrechts: (00:08:20):

Okay. And I take it the city has no objections to their own document so I'll go ahead and admit the staff report and all the attachments there too. So, alright, go ahead.

Mrs. Termure: (00:08:32):

Okay, moving on down that report or under his background, we just wanted to comment on points G and H together there that Mr. Well the city, anytime we made any kind of appeals or anything that we made, we've provided all of these documents but their point was they needed photo documentation that was going to be their only form of evidence that was going to be allowed it seemed like. And as we're kind of going over some of the codes, none of them really state that photo evidence is needed. So we're just really frustrated with that. Nothing we're providing to them is being accepted except for the photo evidence. And just as some note that I made was that fact that we actually don't have photos kind of proves the point that we did not do it with the intent, us taking down the trees, we didn't do it with the intent to develop, we never thought to take pictures because it never crossed our mind that we would need evidence to us to anticipate needing evidence insinuates a forethought of planned future action.

(00:09:57):

And this was not the case for us. We just kind of went based on what we were advised. I know the city at some point I think we have some notes on that to the city kept saying that we've done developing, we've built the previous home so we should know better, but our stance remains then we did what we were told. If our arborist, if our planner, if our who, whoever was helping us said do this, this and this. That's what we did. And that was kind of our situation here too. We were told this is what needs to happen. We did what said we needed to happen. Just because we've done similar things in the past, whether it was a removal or anything doesn't mean we know what the codes are, what the current

Speaker 3 (00:10:49):

Requirements

Mrs. Termure: (00:10:49):

Are. So we're kind of relying on other people's advice or professional's advice. And that was again what we did in this situation.

Examiner Olbrechts: (00:10:59):

And let me remind you, I mean this isn't a violation hearing. This is the permit application hearing. The only issue is were these nuisance or hazard trees. So the kind of comments you're making now would go towards whether the fine should be reduced once we get to a fine hearing. So just so we keep our focus on what what's pertinent here is are these nuisance or hazardous trees? That's the issue.

Mrs. Termure: (00:11:26):

Our defense is that yes, they were nuisances. We had the arborist that said that they were, we have the tree cutter that said that we had our tenant that was afraid of that tree and then my husband who saw it as well, the city was asking for proof of those. The only evidence that they would accept was photos in that case. That's kind of where I was going with it. We didn't have photos because we didn't anticipate needing photos. The tree cutter, they were saying why doesn't the tree cutter have photos? Why doesn't the arborist have photos? Because that wasn't their practice, they're in their own practice. They don't practice taking pictures of trees. So there was no need for us to even consider why would we need photos? Why would that idea across our minds

Mr. Termure: (00:12:12):

At that time we were not thinking of developing. But like I said, I'm not going to go into that, but there's two experts in the field plus some eyewitnesses against one. And this is our frustration is one is better than three

(00:12:34):

Based on what? Because we provided information, but whatever we provided it was not good enough for him. And what his assessment he had, since he hasn't seen it, what is his assessment based on? Because even on the pictures that they provided, I can show you that the tree was leaning towards the house and of the storm being in November, he says on page two of three you can see that the tree is leaning towards the house and of the storm that was back in ber, his assessment is that it could have stand. What about if could have fallen of the house? Who would've covered the damage? The insurance, if they see this, they would not cover my house because the tree is indenture of destroying my house. So which one is it? Even the insurance doesn't approve it. The eyewitness, the experts in the field and it's just him.

Mrs. Termure: (00:13:35):

And our frustration a little bit with that was as well, he's making decisions based on aerial pictures that were taken up to two years before us taking down that tree. And it's an aerial picture. It's taken from far away. There's no way to see the trunk and the bark that the arborists and the tree cutters have remarked on and he's never been there to see the tree even after the fact. He never came to the site to check the trunk and to see, but yet he's still maintaining that point. Again, our frustration is just that he's only request was I need pictures, I need photos. That's the only thing that's going to stand. I don't have that. But we have other witnesses and other

Mr. Termure: (00:14:28):

Documents and also the information that we have on the second tree, which is close to the house, a foot and a half away from the foundation. And if you go at the site you'll see that on the other side it's a four foot crawl space. So the roots, it's not really tum and it's rotten. And for him, yes he can stand. Yes he could have stand, but he could have fallen at any time. We showed that the trunk is rotten, one third of it. But like my wife said, nothing convinced him that there was some problem with the tree and I recommend not coming in because I didn't know to come and get the permit. But other than that, I think I did everything right from what needs to be done.

Speaker 3 (00:15:15):

Okay.

Mr. Termure: (00:15:19):

Questions.

Mrs. Termure: (00:15:49):

The only other note that I kind like to, and I'm going to read it because we wrote it and it's just easier to read and try to paraphrase. Sure. It was talking about the cyclone from November. The city had made a comment that it could have stood, but we just want to make a comment to that. So the city insisted that the bomb cyclone of last November would never have affected the pine tree which had a perpendicular crack running just below where most of the branches were weighed on the tree. The city admits that branches will fall in a wind but in a wind event. But because the tree had adapted to wind exposure, no

serious issues would occur. The tree had a co-dominant union with a large horizontal branch that overhung near where children play and near the house. Unfortunately the fact that the prevailing winds are southwest in nature here does not indicate that a 60 to 80 mile per hour wind gust from the east, which is unusual would affect the wind adaptability of the street to withstand east winds. Does the city have a magic globe that can foresee events with so many variables? So to us, no foundation for this opinion and should be given a weight.

Examiner Olbrechts: (00:17:07):

Okay,

Mrs. Termure: (00:17:07):

That was my comment to that.

Examiner Olbrechts: (00:17:08):

Alright, very good. Is that it for the term yours then? I think so. Okay. Ms. Kroll, any cross-examination?

Ms. Croll: (00:17:27):

Yes. So Mr. Termure, you have developed several properties in Kirkland prior to removing trees on this property in 2023. Is that correct?

Mr. Termure: (00:17:41):

One, not several.

Ms. Croll: (00:17:44):

Prior to 2023, you had developed one other property in Kirkland?

Mr. Termure: (00:17:49):

Yeah, I was standing several. I don't have the experience of several. There was my brothers who has developed. It's not just me.

Ms. Croll: (00:17:55):

Okay. And you obtained permits to remove trees on that property, is that correct?

Mr. Termure: (00:18:01):

I don't remember. I did everything what the experts told me to do at the time and yes, I did whatever they asked me to do.

Ms. Croll: (00:18:08):

And so before you removed trees on this property, did you read the code about tree removals?

Mr. Termure: (00:18:16):

Like I pointed in the beginning I didn't want to cut the tree but I was forced by my tenant and that for the safety of the children.

Ms. Croll: (00:18:23):

Okay. I'm not asking about whether you wanted to cut the tree or not. You did before you cut the tree, did you read the code regarding requirements for cutting trees on private

Mr. Termure: (00:18:34):

Property? No, I relied on the arborist report that he brought up to me.

Ms. Croll: (00:18:39):

Okay. Did the arborist read the city's code requirements?

Mr. Termure: (00:18:42):

We have to ask him.

Ms. Croll: (00:18:44):

Okay. Did you get a permit to cut the trees on your property before you cut them?

Mr. Termure: (00:18:49):

No,

Ms. Croll: (00:18:49):

I didn't. And did you take photos of the alleged damage to the trees before you cut them? I did. Are you aware of Kirkland zoning code 95.2 3.6 regarding the removal of hazard or nuisance trees?

Mr. Termure: (00:19:09):

I didn't know the also, I was not aware of that.

Ms. Croll: (00:19:13):

Are you aware of this statement in that code provision the city may approve the removal of dead dying and or diseased trees from private property as hazard trees without the submission of a tree removal permit. If the applicant provides photographic evidence demonstrating that the tree meets the definition of dead or dying a tree risk assessment reports shall also follow the method for developing a tree risk rating set forth in the most current addition of the ISA tree risk assessment manual and it has a list of things that shall be included. Did you take any photographs as required by this provision?

Mr. Termure: (00:20:03):

Like I mentioned, I didn't know about that and I didn't already put what I was told by the experts to do. I didn't know all that well.

Ms. Croll: (00:20:10):

Okay. And you didn't even check with the city, is that correct? I didn't know I had to. And you did not prepare a tree risk assessment pursuant to a qualified tree risk assessor, did you?

Mr. Termure: (00:20:32):

I did that later when he was asked and I did that to provide that.

Ms. Croll: ([00:20:38](#)):

Does your assessment prepared by somebody who is track certified, pre risk assessment qualified?

Mr. Termure: ([00:20:48](#)):

I don't know what that means.

Ms. Croll: ([00:20:51](#)):

Did he provide you with credentials showing that he was track qualified?

Mr. Termure: ([00:20:55](#)):

I looked at his forms and I believed him and I went on with the assessment that he gave me

Ms. Croll: ([00:21:01](#)):

This Before you cut the tree or after you cut the tree?

Mr. Termure: ([00:21:06](#)):

I have a letter before I cut the tree and then later when I submitted the development, the city asked me, I went back on him and asked him to do that. And you see the date that it was not misleading or so I provided everything that you guys asked me and he asked me to do.

Ms. Croll: ([00:21:25](#)):

Okay. So before the tree was cut you had an estimate on the cost of the cutting from Evergreen tree? Correct.

Mr. Termure: ([00:21:32](#)):

And for the same guy who wrote the tree assessment? Yes.

Ms. Croll: ([00:21:36](#)):

No, this is from Evergreen Tree. You said you didn't go with them. That's the assessment you showed us?

Mr. Termure: ([00:21:43](#)):

Yes. And he wrote the assessment, the three, which one is he wrote? This is the first one that he did it in 23. It's right then. And then in 2024 he did the basic risk assessment form. It's done by him.

Ms. Croll: ([00:22:06](#)):

Okay. And so the document you showed us the yellow document, that is a estimate on the cost of removing the tree, is that correct?

Speaker 3 ([00:22:20](#)):

Correct.

Ms. Croll: ([00:22:21](#)):

Okay. Is that a tree risk assessment form? According to the city's code,

Mr. Termure: ([00:22:26](#)):

Again, I don't know the laws. You guys work here and then you inform. I didn't know. So I went to an expert. He said this is what it is and I was pushed at that time to try to help my tenant who was with me for the last 10 years trying to accommodate with me and save his children. I saw the branches, I cleaned the property a lot of the times and from what I knew in the past, you can cut a tree. Now that I looked in the report that you sent, if you have more you can cut and so on. But that's all I knew. So everything that I did at that time, I thought I did the right thing.

Ms. Croll: ([00:23:07](#)):

And now that you didn't, is that correct?

Mr. Termure: ([00:23:10](#)):

Now it's different.

Ms. Croll: ([00:23:11](#)):

It's not different. The code is the same.

Mr. Termure: ([00:23:13](#)):

You didn't, it's different but I didn't do it with the intent. And this is what you're trying to push me that I did it with intent and that's not true.

Ms. Croll: ([00:23:22](#)):

Okay. Well intent actually doesn't matter.

Mr. Termure: ([00:23:25](#)):

Okay.

Ms. Croll: ([00:23:27](#)):

But we have a lot of evidence to indicate what the intent was, but the intent doesn't matter. It matters that you did not follow the code and you agree with that? Correct?

Mr. Termure: ([00:23:43](#)):

Wait a minute, you also have to look at people who are qualified and people who are trying to persuade or tole, which I'm not. And I try to work with you in good faith and I can show it even in the application this January just because my check bounced for I don't know what reason. Sorry. But you jumped real quick to dismiss and put me at fault. I don't think it was right. So that's why I see that whatever I do, nothing holds it and that hurts because I am trying to obey with everything that I know. I feel sorry that I didn't come to ask for the permit. Yes. But like I said, whatever I do, nothing is good enough. You just want to penalize me. So I'm asking you, I'm asking you in January, why did you jump so quick to dismiss? This case is done is at fault.

Ms. Croll: ([00:24:50](#)):



And with regard to the dogwood tree, you removed that tree also correct? Please.

Mr. Termure: (00:24:56):

Can you answer

Ms. Croll: (00:24:57):

My question?

Examiner Olbrechts: (00:24:58):

No, Mr. Mr. Is Ms. Cornell's, I'm sorry. You're the one answering questions at this point. I'm sorry. Okay.

Ms. Croll: (00:25:05):

You removed the dogwood tree without a permit, is that

Mr. Termure: (00:25:08):

Correct?

Ms. Croll: (00:25:10):

Yes. And that was not threatening your neighbor was it?

Mr. Termure: (00:25:14):

It was traveling my house and I showed provided on this time I provided pictures after the fact that the trunk, it's rotten 30% and you have in your documents and then it is so close to the house, it could have fallen on this cycle. And like I said, like I said before, it was so close to the house, they had only roots on one side. The other side he didn't have roots because of the foundation, the cross face of the house. Has everyone checked to see the information that I put, it's legitimate or not. So in the beginning he said pictures. Pictures. When I provided pictures, no, this picture I don't like it.

Ms. Croll: (00:25:56):

Could you look at the site plan? That's at E page 40, which you submitted.

Mr. Termure: (00:26:13):

Which

Ms. Croll: (00:26:13):

Page? E. E page 40. Okay. Now the pine tree that was removed, you submitted a site plan showing that you're going to have driveways in that location. Is that correct?

Mr. Termure: (00:26:41):

Driveway where? The pine tree. The pine tree. There's going to be a house, it's not a driveway.

Ms. Croll: (00:26:48):

Okay. A house. And what is in the location where you removed the dogwood? Another house unit C? Correct.

Mr. Termure: (00:27:02):

The dogwood should be somewhere where the house on the right bottom house, I don't know. It's not on the map but somewhere where there it is.

Ms. Croll: (00:27:16):

I believe it's over by unit C. Correct?

Mr. Termure: (00:27:21):

It should be close to the corner of the house.

Ms. Croll: (00:27:29):

These are proposed new units, correct? Four new units?

Mr. Termure: (00:27:31):

Correct.

Ms. Croll: (00:27:32):

And the house that is on the property now will be removed?

Mr. Termure: (00:27:35):

Correct.

Ms. Croll: (00:27:36):

Okay, so you had to remove the dogwood to protect the house you're removing. Is that your testimony?

Mr. Termure: (00:27:42):

What I was

Mrs. Termure: (00:27:43):

Saying, at the time we had no intention of taking on the house. We were planning on developing.

Mr. Termure: (00:27:48):

The development came later, a year later after the trees were cut. So at the time when I took the trees down, I didn't have the intention of developing the property. I only did it for the safety of the tenant.

Ms. Croll: (00:28:03):

Okay, and what were the apple trees hurting when you cut them down?

Mr. Termure: (00:28:08):

They had mags in it and since I had there and it is a problem and I said you need to get rid of it because of that. So I don't know why you want to think that a tree because that has been solved.

Ms. Croll: (00:28:19):

Who said that the apple trees had maggots

Mr. Termure: ([00:28:22](#)):

That the tree car company and he showed it to me.

Ms. Croll: ([00:28:27](#)):

Is it in his report?

Mr. Termure: ([00:28:30](#)):

Am I asking Since then, since this issue, since this issue has been sold between me and why do you want to bring him up again? It was not part of the, it was not part. This what I'm trying to, I never address it in the letter because I know, but I wrote that in application Why? And Mr. Coy said he accepted that. So what I'm saying, again, you're trying to find all kinds of information to find me guilty, which is not right.

Ms. Croll: ([00:29:04](#)):

Your tenant is Spencer King, is that correct?

Mr. Termure: ([00:29:06](#)):

Correct.

Ms. Croll: ([00:29:07](#)):

Is he an arborist?

Mr. Termure: ([00:29:09](#)):

No. No.

Ms. Croll: ([00:29:10](#)):

Okay. And you had a declaration signed by a Jacob Randall, is that correct?

Mr. Termure: ([00:29:17](#)):

By Agent Randall and by my tenant.

Ms. Croll: ([00:29:21](#)):

So your tenant is Spencer King, correct? Correct. And he's not an arborist?

Mr. Termure: ([00:29:25](#)):

No.

Ms. Croll: ([00:29:26](#)):

And is Jacob Randall an arborist?

Mr. Termure: ([00:29:30](#)):

He's an expert in the field.

Ms. Croll: (00:29:37):

He removes trees, correct?

Mr. Termure: (00:29:39):

Correct.

Ms. Croll: (00:29:40):

For a living he cuts down trees.

Mr. Termure: (00:29:42):

That's what I know.

Ms. Croll: (00:29:46):

Does he determine how he can trim a tree to save it? If there's a loose branch

Mr. Termure: (00:29:55):

On that? I think you have to ask him. I don't know all that.

Ms. Croll: (00:29:58):

And did you bring him?

Mr. Termure: (00:30:00):

No, I did not.

Ms. Croll: (00:30:01):

So this is your burden of proof and if you didn't bring him then we have to assume the answer's No.

Mr. Termure: (00:30:07):

Yes, no, no, but I brought the letter signing that what he saw on it and I think that is sufficient.

Ms. Croll: (00:30:18):

I don't have any further questions at this time.

Examiner Olbrechts: (00:30:20):

Okay. Alright. Okay, so at this point, does the city have any evidence that wants to present?

Ms. Croll: (00:30:26):

Yes. Okay, we're going to start with an overall presentation of the evidence by Nick Safo. Okay. Planning manager. And then we'll be calling testimony from the city's planning director, Adam Weinstein and the arborist who can shed some light on some of these arborist terms.

Examiner Olbrechts: (00:30:46):

Okay, great. Alright Mr. Salu, let me, you swear you in there, just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Ms. Croll: (00:30:53):

Yes.

Examiner Olbrechts: (00:30:54):

Okay, great.

Ms. Croll: (00:30:55):

Mr Hearing examiner. So Mr. Saluto is going to present a PowerPoint which we'd like to submit into evidence and we do have hard copies for you and the tremors if you'd like to have them now.

Examiner Olbrechts: (00:31:08):

Sure, yeah, that'd be nice. Yeah, and if you just offer that up for admission after he gets through it, so that would be good. Great, thanks.

Speaker 6 (00:31:27):

Good afternoon hearing examiner. My name is Nick slu, I'm a planning supervisor. I have not been promoted to finding manager. My apologies.

(00:31:37):

As alluded to earlier, I'm presenting in Tim Coys stat as he is out ill. This presentation is really just a summary of his staff report. A lot of the technical components and code references are in that staff report, so I'll be given just a quick overview here where we need subject matter expertise. Again, as alluded to earlier, we do have Anna Heckman, the city's environmental program coordinator and a certified arborist and expert on the city's tree code as has been established city permit number TRE 2 4 8 0 3 9 3 8 currently has a decision entered for denial for the removal of two trees, a 30 inch pine and a 18 inch deciduous tree.

(00:32:30):

We are in the thick of it, but I'll just real quick go over the rules of the appeal hearing. Of course, it's open record and limited to items raised in the letter of appeal. The limited participation is provided for the applicant and who happens to be the same as the appellant in this case, staff and parties of record of which there are none on this permit highlighting here the burden of proof is on the appellant who has a responsibility of convincing the hearings and at the city's decision was incorrect. And you as a hearing examiner first have the decision to affirm reverse or modify. I know that says director's decision, this was not a director's decision, but a planning official decision made by Tim Coy.

(00:33:13):

Some background to paint a timeline of how things occurred. To get where we are today on April 29th, 2023, we know as a fact that the trees were cut. Here are two photos from aerial imagery available to the city. On the left you have aerial photography taken. The moment trees were being removed, the large stick you see is the 30 inch pine. On the photo to the left, you see right against the house, the deciduous tree at the time on the left it's still standing. And then on the right, a view from the opposite direction from the south side of the property showing the cut rounds of the pine tree in a pile and the

deciduous tree that would've been behind the house now removed both photos from the same date are mere hours apart.

[\(00:34:10\):](#)

That all occurred in April 29th, 2023 and it is about a year later that a development permit was submitted on behalf of Mr. Tamer. And at that time, as staff began the review of that permit on LSM for cottage housing, city staff discovered unpermitted tree removal on the property. A couple weeks later after pointing it out to Mr. Trimmer and after the fact tree removal permit was submitted for one tree, the 30 inch pine emphasizing more than one year after the tree cutting. I will note that the snip there on the right is from one of the documents provided from a certified arborist dated May 16th, 2024. This document is dated more than one year after the tree had been cut in April of 2023. More on that here and just it was in mid-June that city staff as part of review of more aerial photos and the permit submittal city staff discovered additional unpermitted tree removal. This is when we determined that there was a deciduous tree up against the house that also had been removed and was not provided for in the tree removal permit that Mr. Trimmer had submitted a few weeks before. At that time, Mr. Trimmer revised the tree removal permit application to also include an 18 inch deciduous tree and provided the photo of the stump, which we'll get to again here in just a bit.

[\(00:35:52\):](#)

In mid-July, Tim Coy, the city's development view arborist issued a decision to deny the tree removal permit. I'm going to try to address some of the comments that were made earlier on the fly here were appropriate. So bear with me as I look at my notes. I we'll get into this here in some subsequent slides, but one of the main tenants of Mr. CO's denial was the lack of photographic evidence when submitting a tree removal permit. It does not necessarily, aside from that reference that Ms. Kroll had cited, a tree permit does not necessarily have to have photos for us to be able to review it. But where the tree has been cut down and fully removed, that is effectively destruction of the evidence that we would've been Tim Coy would've been observing. So due to the lack of that, the lack of the physical evidence remaining, the only thing we could rely on to verifiably peer review the tree permit and the alleged hazard conditions would've been to have photographs that show the condition of the trees prior to their removal.

[\(00:37:12\):](#)

In January of this year, on the ninth, January 9th, 2025, Mr. Tamer filed an appeal of the City Street permit decision, which then brings us to today the appeal hearing on the matter. I'll jump through some of the rationale behind Mr. CO's decision. A lot of this has been touched on in detail in the staff report, but I'll summarize here briefly. The Aris report is in fact dated more than one year after the fact, after the trees have been removed. No photographic evidence of the trees hazard condition has been provided to this day. In particular the 30 inch pine tree and we'll talk about the 18 inch deciduous tree here in just a sec. Again, without photographic evidence, there is nothing for the city to review and verify a true hazard condition of the tree prior to their removal.

[\(00:38:07\):](#)

The tree risk assessment form and ISA basic tree risk assessment form was provided. It contains problematic information. What I mean by that is that it is improperly filled out. Mr. Asof, I believe the certified arborist that submitted this is not track certified to the best of the city's knowledge track being a tree risk assessment qualified, which is a three day course that the ISA provides to qualify someone to Hughes the basic tree risk assessment form. It is evident that he's not qualified by the improperly filled out information here in the form. Not a reliable piece of evidence for Mr. Coy to make a decision on the

18 inch deciduous tree. This is one photo that we have received in does show a moderate amount of decay in the trunk of the tree.

[\(00:39:09\):](#)

This is the only piece of evidence. There's no other structural evidence of this tree. Presence of decay alone does not determine risk of a tree. We would've needed to see what the actual structural condition of the tree is to know that that tree had any risk of potential failure. Again, no photos provided of the hazard conditions going by. What photos we do have through aerial imagery. We see a series here prior to the 2023 tree cutting event. On the right side, you see May of 2019 the two trees standing, growing in a healthy good condition. No apparent signs of hazard conditions on the left you have a photo from a couple years later, 2021, same trees still growing in a healthy good condition. Again, no signs of a hazard at this time. Two years later we have the aerial imagery of the cutting occurring more on the qualifications to the lack thereof for the hazard assessment.

[\(00:40:14\):](#)

Mr. Asof is a certified arborist that provided the ISA basic tree risk assessment for the pine. While he is an ISA certified arborist, he is not track qualified. So the preparation of that basic tree risk assessment form is unreliable, if not invalid. Mr. Randall is not an ISA certified arborist or tree risk assessor. He, to the best of our knowledge, does not have any certification to make any sort of risk assessment or assessment of a tree's condition whatsoever. He's a tree worker employed by a tree removal company. And lastly, Mr. King, as Ms. Kroll established earlier, is a tenant and the city is not aware of any professional relationship to the arbor cultural industry, certainly not an ISA certified arbor or truer risk assessor, simply the tenant of the house on site.

[\(00:41:16\):](#)

I'll now walk through a few of the appeal issues that were raised, kind of organized by theme here. The trees were hazardous. This isn't a new issue. This is what has been suggested from the moment the tree permit was submitted. While additional documents have been provided as part of this appeal filing, there is still no substantive evidence that shows the trees would have met the city's hazard criteria. Again, no photos of the trees prior to their removal and with the trees being fully removed, the city has nothing to verify the alleged hazard conditions. The city does not believe the arborist and accuses him of lying. I'm not aware of any statement where we have suggested that Mr. Trimmer's arborist is lying. We have simply put forth that the arborist does not qualify to perform the tree risk assessments using the track methodology or even has even provided anything that meets the city's codified standard for a tree risk assessment. This is evidenced by the quality of the submitted tree risk assessment form, which again is improperly completed and contains problematic information. And to emphasize again, these reports, documents were provided and composed more than one year after the removal of the tree without photo documentation, none of which can be peer reviewed.

[\(00:42:47\):](#)

The trees threatened the tenant's safety. The city does indeed take tree safety quite seriously. Hazardous trees may be removed through a proper permitting process. In fact, we have a emergency removal exemption for trees that have an imminent risk of failure. If one truly does believe there's an imminent risk of failure, they can remove it prior to obtaining a permit. The code does require however that proper notification and evidence be provided to the city within seven days of the removal. That would've been May 5th or sixth of 2023. It was one year later in May of 2024 that we received a permit application. I would also add here that had all this same information been provided within that seven days of an emergency exemption, we likely would've denied that permit as well as none of this evidence is verifiable.

(00:43:50):

On the bomb cyclone event, there was suggestion that the trees would've failed in November, 2024. Bomb cyclone event. Purely speculative, the trees were removed years just under two years before that event was even forecasted. Also, results of extreme weather events. Clearly unpredictable healthy trees can fail when you don't expect them and trees with structural defects and remain unaffected by storms. Furthermore, a tree risk assessment does not really stand the test of acts of God or the like. So in conclusion, for all the reasons I just outlined, the city does maintain that its decision is proper on the basis of alleged. But unverifiable hazard conditions and the problematic and unqualified documentation provided, the city recommends that hearing examine are affirm the city's decision denied through removal permit. And as a matter of process, you Mr. Hearing examiner have until April 9th, 2025, which is 90 days from the date of appeal to issue a decision upon.

Examiner Olbrechts: (00:45:03):

Okay, thank you sir. And Mr. Termer, do you have any objections over entry of the PowerPoint that was just presented? That would be just on technical grounds, like something's not relevant or there's a document that is not what it says to be like the photograph isn't of the property or something of that nature. If you disagree with the contents, you'll get to argue that when it's your turn to speak again.

Mr. Termure: (00:45:25):

So what I would love to have seen in this is the yellow paper that you I submitted and it's not in our short.

Examiner Olbrechts: (00:45:37):

That's already part of the staff report, you mean? I mean it's already part of the, yeah. Okay. Okay. Yeah, I'll go ahead and admit the PowerPoint presentation. And Mr. Termin now is your opportunity to cross examine Mr. Safo if you to have any questions of his presentation. You can ask some questions at this point. Yes,

Mr. Termure: (00:45:54):

So I do. And I mean I don't know if it's for him or I don't know who can answer. Well

Examiner Olbrechts: (00:45:58):

Right now it just has to be him. So yeah, if any questions from what he just testified about,

Mr. Termure: (00:46:06):

Yes. On the picture that you showed one of three, you can see the

Ms. Croll: (00:46:18):

Crown

Mr. Termure: (00:46:18):

Of the tree, the crown of the tree, how strong it is in 2000.

Examiner Olbrechts: (00:46:23):



Is this the third page of the PowerPoint you're talking about? Page

Mr. Termure: (00:46:26):

44? No, no, no. It is decision rationale decision. So on this picture you can see the crown of the tree kind of strong. When we took the tree, it had only because the branches were kept falling and only took the tree, it had only half of that crown. So the tree was, I have to see what I can find. The pictures showing that the tree was not as healthy as when this picture was taken.

Examiner Olbrechts: (00:47:10):

Do you have a question of this again, this is cross-examination time. Like I said, you'll get a chance to argue about all this, but it's your turn to talk again. So these are just questions of Mr. Slu FO at this point.

Mr. Termure: (00:47:22):

That's it.

Examiner Olbrechts: (00:47:23):

No, that's it. No questions. Okay. Thank you Mr. Slu fo all. And Ms. K Crowley said you had another witness.

Ms. Croll: (00:47:27):

Yes, I'd like to call Adam.

Examiner Olbrechts: (00:47:37):

Okay, Mr. Weinstein, welcome to the proceeding and just swear you in at this point. Raise your right hand. Do you swear firm tell the truth, nothing but the truth in this proceeding?

Mr. Weinstein: (00:47:43):

I do.

Examiner Olbrechts: (00:47:44):

Okay, great. Go ahead.

Ms. Croll: (00:47:46):

Mr. Weinstein, can you let us know what your current position is?

Mr. Weinstein: (00:47:50):

Yes, I'm the director of planning and building at the city.

Ms. Croll: (00:47:53):

Okay. And what is your employment history with Kirkland

Mr. Weinstein: (00:47:56):

Employment History, I came to Kirkland in 2017 as the deputy director for planning and building and then I became the director in December of 2018 and have been in that position to the present.

Ms. Croll: ([00:48:09](#)):

And what's your prior employment history?

Mr. Weinstein: ([00:48:12](#)):

Prior employment history, I was the deputy director of community development in the city of Pleasanton, California from about 2014 to 2017. And before that for about 13 years, I was a consultant, a city planning consultant in private practice in Berkeley, California and Seattle.

Ms. Croll: ([00:48:29](#)):

And your educational history?

Mr. Weinstein: ([00:48:31](#)):

I have an undergraduate degree in landscape architecture and English from the University of Wisconsin. And then I have a master of city planning degree from University of California Berkeley.

Ms. Croll: ([00:48:42](#)):

And in all your employment history, have you dealt with trees within urban areas?

Mr. Weinstein: ([00:48:50](#)):

Yes. Yeah, trees in urban areas is a sort of a fundamental piece of urban planning and really every job that I've worked in from graduating college had some degree of involvement in trees.

Ms. Croll: ([00:49:02](#)):

Alright. And here at the city of Kirkland, our tree code was recently amended.

Mr. Weinstein: ([00:49:10](#)):

Yes.

Ms. Croll: ([00:49:11](#)):

Can you tell the hearing examiner when that happened?

Mr. Weinstein: ([00:49:14](#)):

Yes. It was a long a project, a very long duration. We started working on that tree code amendment project in 2018 and it didn't wrap up until 2022. So it was several years with lots and lots of planning commission meetings and city council meetings and public outreach. And it encompassed a lot of the issues that relate to urban planning and Kirkland from housing production to environmental protection.

Ms. Croll: ([00:49:40](#)):

And was there a lot of input from community members about their ability to remove trees from their private property and how that was going to be affected by the tree code?

Mr. Weinstein: ([00:49:51](#)):

Yes, that was the fundamental issue that was raised during the tree code amendment process, balancing the city's objectives of building more housing and then also protecting trees and making sure that developers had a certain path moving forward to develop property.

Ms. Croll: ([00:50:06](#)):

Okay, so developers and homeowners were interested in this process, correct?

Mr. Weinstein: ([00:50:11](#)):

Exactly. Yeah, we had dozens and dozens of meetings with the community regarding the tree code.

Ms. Croll: ([00:50:16](#)):

Okay. And did those tree code amendments actually, were they appealed?

Mr. Weinstein: ([00:50:25](#)):

Yes, they were appealed by the Messer Builders Association of King in Snohomish County on the basis that the tree code would impede housing production in the city. And

Ms. Croll: ([00:50:37](#)):

How did you resolve that appeal?

Mr. Weinstein: ([00:50:40](#)):

We ended up reaching a settlement agreement with Messer builders. Generally speaking, we improved and provided more resources for the pre-submit process. One of the claims or one of the big concerns of the master builders group was that they going into a development scenario wouldn't necessarily have clear expectations for what trees needed to be retained on the site and which trees could be removed. And so we worked really hard with 'em during the settlement process to create new tools that they could use to figure out what trees should remain like a high retention tree checklist was one of the products that came out of that settlement agreement. A pre-submit conference, tree retention checklist was another tool as well and we provided other resources on our website as well.

Ms. Croll: ([00:51:31](#)):

And these developers, they wanted certainty early in the development process, is that correct?

Mr. Weinstein: ([00:51:40](#)):

That's right.

Ms. Croll: ([00:51:41](#)):

And we provided more of that as a result of their appeal, is that correct?

Mr. Weinstein: ([00:51:47](#)):

That's right, yeah. I think actually the settlement agreement was a good ultimate outcome for the tree code process. I think it improved our process and created more certainty for developers.

Ms. Croll: (00:51:57):

Alright. And is there a reason why the city had in its amendments to the code, things like increased fines for when you go on a property, private property and remove a tree without a permit?

Mr. Weinstein: (00:52:21):

Yes, and the increase in tree fines was a separate project from the tree code update, but it was related to it. I think what we were finding was that we always had a fine system in place, but the fines were very modest and so a lot of developers were coming in and removing trees and paying the fine and that was just sort of considered part of the cost of doing business. And so when we raised the tree fines just slightly prior to the tree code update, the fines were increased and the intent there was to really provide a disincentive to remove trees.

Ms. Croll: (00:52:55):

And in our code amendments we do have additional protective restrictions for high value retention trees. Is that correct?

Mr. Weinstein: (00:53:06):

That's right.

Ms. Croll: (00:53:07):

And developers are required, I believe, to go through and show that they can work around a tree that's existing on their property before they're given permission to cut it down. Is that correct?

Mr. Weinstein: (00:53:21):

That's right.

Ms. Croll: (00:53:23):

It's much easier for them to just take it down and replant. Right,

Mr. Weinstein: (00:53:26):

Right.

Ms. Croll: (00:53:27):

And were developers doing that prior to our tree code amendment?

Mr. Weinstein: (00:53:31):

Absolutely. Yeah. And oftentimes we were finding that developers were coming in prior to development was happening and removing trees from their sites to make the development process easier.

Ms. Croll: (00:53:40):

And they were doing that several years in advance of development. Is that correct?

Mr. Weinstein: (00:53:44):

Sometimes, yeah.

Ms. Croll: ([00:53:47](#)):

Now when you amended the tree code, which you had a finger in this pie the whole time as the director, is that correct?

Mr. Weinstein: ([00:53:56](#)):

That's right. Yeah.

Ms. Croll: ([00:53:57](#)):

You took every proposed amendment to planning commission and then the city council and things like that, is that correct?

Mr. Weinstein: ([00:54:05](#)):

Yes, I was intimately involved in the entire process.

Ms. Croll: ([00:54:07](#)):

Okay. When you amended the tree code, did you intend to make it difficult or confusing for homeowners to remove a hazard tree?

Mr. Weinstein: ([00:54:21](#)):

No, of course not. Yeah, we did not intend to make it confusing or difficult for folks to remove hazard trees. Hazard trees exist across the city and we wanted to make the process as easy as possible to remove those trees. The gist of the fundamental sort of objective of the tree code was really to protect mature trees that were in good shape.

Ms. Croll: ([00:54:46](#)):

And the other thing is that if a developer has a particular plan for a property and there's a high retention value tree in the middle of the property, 99.9% of the time they're going to cut that down, right?

Mr. Weinstein: ([00:55:00](#)):

That's right.

Ms. Croll: ([00:55:01](#)):

Yeah. And we're going to allow that.

Mr. Weinstein: ([00:55:02](#)):

That's right. Yeah. Again, another important piece of the tree code was I guarantee that none of the tree protection measures in the code would interfere with the density that you could achieve with our other development regulations.

Ms. Croll: ([00:55:15](#)):

Alright. And that was specifically included after the appeal was filed, correct?

Mr. Weinstein: ([00:55:21](#)):

Correct.

Ms. Croll: (00:55:22):

The city was accused of having such stringent regulations that developers could not meet their, could not achieve their density allowables, correct?

Mr. Weinstein: (00:55:37):

That was the claim, yeah.

Ms. Croll: (00:55:38):

And you put specific language in the code saying density would not be affected by trees?

Mr. Weinstein: (00:55:44):

Yes, and that was actually a part of the code initially.

Ms. Croll: (00:55:47):

Okay. Well now I'm trying to remember what I did.

Mr. Weinstein: (00:55:50):

It was a very long process.

Ms. Croll: (00:55:51):

I don't mean to be testifying, your Honor. It might've already been there. Okay. Okay. And there are different types of removals for hazard trees or nuisance trees. You can remove them in the normal course and you can remove them in an emergency. Is that correct?

Mr. Weinstein: (00:56:12):

That's correct.

Ms. Croll: (00:56:13):

Okay. And when can you tell whether or not there is an emergency? Does the code have a definition of hazard tree?

Mr. Weinstein: (00:56:23):

Yes, we do. It does have a definition of hazard tree. It includes things like there are structural defects, the tree is subject to high probability of failure. We look at targets as Mr. Salu noted. And then I think the last criterion is can the tree be mitigated to avoid the hazard and branches be trend, et cetera.

Ms. Croll: (00:56:43):

Okay. So if we look at Kirkland zoning code 25 point 10, section 17, there are definition of trees and under 17 B, there's a definition of hazard trees, correct?

Speaker 3 (00:57:00):

Correct.

Ms. Croll: (00:57:01):

And it states basically that first thing, it has to be determined by a qualified professional arborist as having an extreme or overall high risk under the I-S-E-I-S-A tree risk assessment qualification or track method. Is that correct?

Mr. Weinstein: ([00:57:23](#)):

Correct.

Ms. Croll: ([00:57:24](#)):

Okay. And so can you just go out to your property if you live in Kirkland and you have private property, and can you say, I'm really worried that tree's coming down and cut it.

Mr. Weinstein: ([00:57:41](#)):

You can do that as long as you get documentation afterwards and submit it to the city

Ms. Croll: ([00:57:46](#)):

Because that's the second option, right? Right. Where you can remove a tree that you think is an imminent failure or imminently going to fail. Right. You can remove it immediately. Right. And when you do that, you still have to show that it was a hazard tree by these three subject, is that correct?

Mr. Weinstein: ([00:58:12](#)):

Correct.

Ms. Croll: ([00:58:12](#)):

You still have to prevent the tree risk assessment by a track certified arborist?

Mr. Weinstein: ([00:58:19](#)):

Correct.

Ms. Croll: ([00:58:19](#)):

And you still need to show that there was some defect in the tree that made it subject to a high probability of failure, correct?

Speaker 3 ([00:58:29](#)):

Correct.

Ms. Croll: ([00:58:31](#)):

Now, is every defect in a tree make it subject to a high probability of failure?

Mr. Weinstein: ([00:58:37](#)):

No. Yeah, I think probably most trees have some sort of defect rot, again, in trees is a fairly common occurrence and that doesn't necessarily result in failure, imminent failure.

Ms. Croll: ([00:58:47](#)):

Okay. And are you familiar with the facts of this appeal?

Mr. Weinstein: (00:58:53):

Yes, I am.

Ms. Croll: (00:58:54):

Okay.

Mr. Weinstein: (00:58:55):

I have been involved with the staff discussion surrounding the case, and then I've also met with Ms V as well.

Ms. Croll: (00:59:03):

Okay. And are you comfortable with the city's decision to deny the after the fact permit for tree removal in this case?

Mr. Weinstein: (00:59:16):

Yes, I am. Yeah, I should say, as the planning director, I assume good intent. And again, I've met with Mr. Trimmer many times. I think he's a good person and I trust that he had good intent. So what I'm left with is really looking at the facts of the case, and I don't think that there was sufficient evidence provided by Mr. Trimmer to show that the trees were not hazardous, the trees were hazardous. Excuse me.

Ms. Croll: (00:59:46):

I have no further questions.

Examiner Olbrechts: (00:59:47):

Okay. Mr. Turor, do you have any cross-examination of Mr. Weinstein? No. Okay. Thank you, sir, for your testimony. It's very helpful. Okay, Mr. Cro, anyone else

Ms. Croll: (01:00:00):

I could call our certified arborists who might be repeating things we've already heard? If you're comfortable with Mr. Weinstein's testimony regarding certified arborists and what they need, that's fine. Otherwise I would like to call Ann Heckman if you'd like to hear further.

Examiner Olbrechts: (01:00:19):

Well, I think just hear from the arborist about the picture that shows the tree rod, her opinion that Absolutely. Yeah, I think on that she would be helpful since Mr. Coy isn't here to be subject across that kind of

Ms. Croll: (01:00:29):

Thing. Absolutely. So Anna Heckman

Examiner Olbrechts: (01:00:42):

All rights. Let me swear you in there, just raise your right hand. Do you swear affirm tell the truth, nothing about the truth in this proceeding? I do. Yeah. And I was just, as I was telling Ms. Crow, I was mainly just curious that there's a picture of a tree stump with some tree rot there. Maybe we could put



that up if you could kind of elaborate on, I mean, I believe it was Mr. CO's opinion, that's not enough to show it's a hazard tree. I'm kind of curious, since we have an arborist here, if you could kind of share your opinion about that as well.

Ms. Heckman: (01:01:08):

Yeah, I can walk you through what I see based on the, yeah, I'll wait until you pull up the, to just start, this is the stump of what is called a dogwood.

(01:01:25):

I'm just stating that because I cannot identify the stump. I did look at some Google Street view photos and then the evidence provided with the aerial photos and what we have is a tree that is close to the house. It's not significantly large in my opinion, multi stemmed. And then we have the photo of the stump and there is decay in the stump. You can see the off-centered holes in the stump there. Decay doesn't necessarily mean a tree has a high likelihood to fail. Think of cedar trees. Think of the Sequoia you drive your car through in the national park. There are a lot of hollow trees out there that are much more significant than this. That said, without assessing the tree fully, I couldn't state anything more about the potential for the tree to fail. What I can state is that based on the size of the tree, if it were to fail, leaning into a house is a lot less damage than say a very large tree further away from the house. And if based on the evidence that was provided today, if there are no roots on the house side, the likelihood for the tree to fail toward the house would be much lower than potentially the way. So those are just some items based on tree biology and not necessarily a risk assessment.

Examiner Olbrechts: (01:03:08):

I mean, just based on this. And you saw the photographs of the tree before it was cut. I mean, can you say anything about the likelihood that it was a hazard or nuisance tree? A small likelihood large. What? Yeah,

Ms. Heckman: (01:03:23):

So we have a white pine and then what's being called the dogwood there, I will not give a tree risk assessment based on my experience. I have many decades of experience doing tree risk assessments. I will not provide one in writing without many, many clarifications of limited evidence. But without seeing a crack in the tree that I don't see any evidence of that pine tree being a problem.

Speaker 3 (01:03:56):

Now

Ms. Heckman: (01:03:57):

That said, there was a comment that a branch failed at the top of the tree. I did notice there are multiple branches, but if a branch fails, that risk has been lowered already. The failure has already occurred. It doesn't necessarily mean the other branches are going to fail immediately. And with that, the probability of the branches hitting something and then causing significant damage, those are two other things you take into account with the risk assessment.

Examiner Olbrechts: (01:04:29):

Okay. And then Mr. Trummer also testified that he, if I understood him correctly, he took the apple trees down because there were maggots. Is that under the city's nuisance or hazard criteria? Would that qualify it for that?

Ms. Heckman: [\(01:04:43\)](#):

It's my understanding those trees were not considered regulated trees. Correct me if I'm wrong. Therefore, he could have taken those down on his own accord. What I recommend to people if they're taking down trees, even if they're not regulated, is to take some photographic evidence. Because if your neighbors turn you in, then we have to take some action. Apple maggots don't impact the tree structure themselves. It impacts the ability for the tree to produce good fruit. So the reason why we have an maggot quarantine area on the west side has nothing to do with us. It has everything to do with Wenatchee.

Examiner Olbrechts: [\(01:05:22\)](#):

Oh, I see. Okay. That makes sense. Yeah. Okay. Ms. Carl, did you have any follow up questions or

Ms. Croll: [\(01:05:28\)](#):

Just a little bit of background? Ms. Heckman, can you advise the hearing examiner on your certifications that you presently have? Yeah,

Ms. Heckman: [\(01:05:42\)](#):

I'm a board certified master arborist and I'm a certified urban and community forester. Those are out of two different certification groups. I got my certified arborist back in 2007. I think with regards to tree risk assessment qualification, you have to be an arborist for a few years, then you have to take a three day course, you have to test and pass the test, and then every five years you need to renew your tree risk assessment qualification showing that you understand the process.

Examiner Olbrechts: [\(01:06:22\)](#):

And are you track certified, I take it?

Ms. Croll: [\(01:06:25\)](#):

Oh yes.

Examiner Olbrechts: [\(01:06:25\)](#):

Okay.

Ms. Croll: [\(01:06:27\)](#):

And Ms. Und, you kind of slipped past it a little bit. You are not just a certified arborist, you're a board certified master arborist. Is that correct?

Speaker 3 [\(01:06:38\)](#):

Correct.

Ms. Croll: [\(01:06:39\)](#):

And that's additional qualification above an arborist?

Ms. Heckman: [\(01:06:42\)](#):

Yes.

Ms. Croll: [\(01:06:42\)](#):

It's

Ms. Heckman: [\(01:06:43\)](#):

A much more considerable testing procedure and experience, including scholastic experience. So I have a master's degree in urban forestry basically.

Ms. Croll: [\(01:06:55\)](#):

And with your certifications, could you explain to the court why the city has these regulations in effect, to protect and preserve existing trees to the extent that it doesn't actually cause harm by overprotecting them and risking human life and safety, et cetera. We don't want to overprotect 'em. We don't want to keep a tree that's going to fall right then,

Ms. Heckman: [\(01:07:26\)](#):

Correct. So can you repeat your question to me? That

Ms. Croll: [\(01:07:29\)](#):

Was, why is it important that we have regulations?

Ms. Heckman: [\(01:07:32\)](#):

Oh yeah. Our regulations help with education and understanding as well as creating a process for everyone to go through. There are many arborists out there who have had a chainsaw in their hands for decades with no biology information, no training with groups. And so one of the reasons why we require track certified i a arborist is that is our industry standard in international society of our border culture to show that people are actually growing and learning. The other thing is, as a consulting arborist, you're supposed to be unbiased. And so you might advocate for your client. But my goal if I come to a site, for example, this one in front of us, is not to make money by taking a tree down. And that is one reason why we require these objective decision making qualifications so that we don't have tree removal companies helping out. Because there is a bias that is there.

Ms. Croll: [\(01:08:56\)](#):

And that bias is that if they tell you you need to remove your trees, they make money. Is

Ms. Heckman: [\(01:09:01\)](#):

That correct? There's a lot more money made in removing a tree than there is in maintaining a tree.

Ms. Croll: [\(01:09:07\)](#):

Yeah.

Ms. Heckman: (01:09:07):

Thank you. I have no

Ms. Croll: (01:09:09):

Further questions.

Examiner Olbrechts: (01:09:09):

Okay. Mr. Tur, any cross-examination? No. No. Okay. Alright. Thank you for your testimony. It's very helpful. Alright, Mr. Roland, you said you had one more witness, is that correct? No, that's

Ms. Croll: (01:09:20):

It. The city has concluded with his presentation of witnesses.

Examiner Olbrechts: (01:09:23):

Okay. Mr. Tab now here to get the final words. Since as I said, you are the applicant, have the burden of proof, so there were points he wanted to disagree with in Mr. SFU's PowerPoint presentation or anything else that you heard. That was the opportunity to do that.

Mr. Termure: (01:09:42):

It's very frustrating when I have a good intent and not trying to deceive and then they come after me and they're all experts and I have to fight with the experts in this situations. And yes, I did talk to Adam, Mr. Adam a few times, and I even showed the picture of the trunk and I don't know if I correct even him and John Ricarda saw the picture and said, maybe you are right in this direction. So now when they showed this picture of this trunk crown, it's very healthy. I mean healthy look, very healthy. Half of the tree, the branches were kept falling and were down. When the tree was, it had only half of that crown, so it was not as good as it shows in here. And in the report, like I said in the beginning, for some reason they didn't want to include this one showing that I have some evidence before the trees were cut.

Examiner Olbrechts: (01:10:47):

That was the February 23rd. Just for the record tree report. Yeah.

Mr. Termure: (01:10:51):

And then

(01:11:06):

On the dock, what? The dock, it doesn't matter. I mean, she was saying that if would've leaned against the house, it wouldn't not have been a lot of damage. But what about if it had fallen on the other side and fall on the other house, which is so close that you can see in the picture. So me, it's right now it's just David finding the Gallard. I mean, I think I've been very open. I mean Mr. Adam, Ken, I met quite a few times. He was very nice talking to me and all that, and I've been open and all this. But in some ways, even with this hearing, I submitted Mrs. Carroll right away, said he's guilty because his check bounced and then they put the hearing three months later. It doesn't look like they want to help the residents, the people, the members of this city.

(01:12:07):

And like I said in the beginning, if it's, I not, I didn't know, but okay, let's negotiate. Give me a little fine so I can move on. I understand that part because I didn't get the permit. But on the other side, I think I did everything. Talked to them, explained it to them, showed the information as much as they could, no pictures when I showed pictures. Again, it's not enough. So it's just I'm here and I'm sorry if I cannot explain myself better, but it's just I'm trying to be a good resident, a good citizen. So here we are.

Speaker 3 ([01:12:50](#)):

Okay.

Mrs. Termure: ([01:12:50](#)):

I just wanted to bring just attention that there was a lot of discussion when they were talking about how some of the codes were updated and for what reason. It seemed that there was a lot of emphasis on developers and these fines, and these codes were amended because of what they were doing. That they were cutting down trees, paying a small fine, and then moving forward. And it almost seems like we are being classified or put into that box of developers. We're being treated as developers, building a house or two doesn't qualify us as developers. So it also seems unfair that we're being treated or we're falling under the same category as that when we're literally just, we've built two houses.

Examiner Olbrechts: ([01:13:38](#)):

Okay. Okay. Understood. Yeah. Alright. Well, yeah, I think I've got the information I need. I'm going to be pouring over the transcripts of this hearing to figure out if you meet the criteria for the permit or not. I think, as I mentioned in the middle of your presentation, your intent isn't, that's not a big factor in this proceeding. I just have to figure out if the trees qualify as nuisance or hazardous trees. I mean intent, it plays a little part in the credibility of the evidence you present, but beyond that, it's not a big factor. And I know that's an important issue to you, and Mr. Weinstein said that he thought you had good intent. So to the extent that has any factor in here, I don't think that's going to go against you very much at all. What does hurt is you didn't have your arborist come and show up here.

([01:14:27](#)):

If the city had asked that your Arbor reports not be admitted because the author wasn't here to be subject to cross-examination, I would've had to grant that request. So the city was being a little nice not doing that. You could have done the same thing because Mr. Coy was here and had his staff report excluded because there, there's a case law that says basically in these contested hearings that people have to be present for cross-examination if they author documents or that kind of thing. So the evidence I have isn't as strong as I'd like on either for reasons on both sides. But ultimately, like I said, you have the burden of proof here. So that's what I have to look at is did you present enough information for me to determine that these trees are actually nuisance or hazardous trees? That's what I'll be looking for in the record.

([01:15:14](#)):

And yeah, that's a tough one. I say this is the city of Kirkland is not picking on you. I see this, I work for 35 different cities and counties and I've seen huge fines assessed from Kenmore, Edmonds, Buron, Renton. A lot of communities are protecting their trees these days. And I think as the city staff said, you have to make the fines large, otherwise people just look at us. The cost of doing business, it's like, oh, we have to pay a hundred dollars fine, but our property value will increase \$30,000 if we get rid of this tree. Of course, you get rid of the tree then that's why you see these huge fines. I mean, I saw one of the biggest cases I had was out in Kenmore where about 10 years ago, somebody moved in from North Carolina and had no idea that people had regulations like this.

(01:15:59):

And he cut nine trees in his backyard. He did it right in front of everybody, wasn't trying to hide anything else, and the city levied a half a million dollar fine on him. So these things get pretty high really fast. And like I said, if I find that a tree permit was properly denied, then the city can go to the next stage, which is a notice of violation at that point. My understanding under the city regulations is your intent is relevant, and that could be a factor in reducing the fines. I know Kirkland's code is a little ambiguous on that point, but from what I got from staff at the last hearing is that that's all allowed. So that would be a big factor at that point. As I said, Mr. Weinstein thought your intentions were good. It sounds like for the most part they are, except for Mr.

(01:16:42):

Kroll presented the fact that you're going to develop the entire property a year later. But I understand you didn't have that in mind probably when you cut those trees down. So anyway, I got a couple weeks to put that together and it'll explain everything and you'll have an opportunity to appeal that to superior court if you disagree with it. And as far as the fines go, that's not going to be done except under a separate notice of violation, which the city may or may not issue. Any questions or anything before we wrap it up for today or?

Ms. Croll: (01:17:14):

I'm not sure that I formally asked for admission of the PowerPoint into evidence.

Examiner Olbrechts: (01:17:21):

Oh, I think I admit that. I thought I did. Yeah, I did. I did it. That one. Yeah. Yeah, I did that. I do that myself. Yeah, I forget those things too all the time. But anyway, she

Speaker 3 (01:17:32):

Has no further.

Examiner Olbrechts: (01:17:32):

Okay, alright. Yeah, yeah. Alright. Yeah. So no, I understand this is very difficult and it's a lot of money, and most of these three cases I see are people relying upon true contractors and true contractors not knowing what they're doing. There was a case in Renton, I had no, I think it was Buren actually. It was after a big storm, a tree contractor went door to door and asked people if he could cut their trees down. They were dangerous. And he did it without any city permits and all the residents got fined for that. So it's a tough situation. It really is. But I'll consider all of that. So thanks again for coming in today.