

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND DECISION**

In the Matter of the Appeals of

**JAMES AND CAROLYN SISLEY
And JOHN M. GILDAY**

Appeal numbers:
**APL06-00002
APL06-00004**

From a Notice of Civil Citation issued by
the City of Kirkland, Department of Planning
and Community Development

Introduction

The City issued a notice of civil citation to Appellants James and Carolyn Sisley and John Gilday, for cutting trees in violation of the provisions of the Kirkland Zoning Code. The appellants appealed the citation.

The appeals were heard by the undersigned Hearing Examiner Pro Tem on April 20, 2006 in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Parties represented at the proceeding were: the appellants, James Sisley, Carolyn Sisley and John Gilday, pro se; and the City, by Craig Salzman, Code Enforcement Officer.

For purposes of this decision, all section numbers refer to the Kirkland Zoning Code (KZC or Code) unless otherwise indicated. After due consideration of the evidence elicited during the appeal hearing, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

The following Exhibits were entered into the record on this matter:

- Exhibit 1: February 9, 2006, letter from Anna Rising to City Code Enforcement
- Exhibit 2: Notice to cease and desist, dated February 23, 2006
- Exhibit 3: Notice of Civil Citation, March 3, 2006
- Exhibit 4: Copy of part of commercial lease
- Exhibit 5: Copy of receipt for certified mailing
- Exhibit 6: Notes made by C. Salzman, indicating DBR of cut trees measured in the field
- Exhibit 7: March 9, 2006 appeal letter from James Sisley to Craig Salzman
- Exhibit 8: March 10, 2006 appeal letter from Waterfund.org, John M. Gilday and James and Carolyn Sisley
- Exhibits 9-28: Photographs taken at the site
- Exhibit 29: 2004 Aerial Photo of site from City archives, prior to cutting

- Exhibit 30: Copy of lease between James and Carolyn Sisley, Mick Plath and John Gilday
- Exhibit 31: Email log of messages between John Gilday and Elizabeth Walker, City of Kirkland
- Exhibit 32: Windstorm data for Seattle area, from Oregon State University

Findings of Fact

1. The subject property is addressed as 229, 299 and 301 8th Street South in Kirkland. The King County parcel number is 012000-0200. The property is zoned Light Industrial Technology Zone (LIT). Appellants James and Carolyn Sisley are the owners of the property. Appellant John Gilday and another individual, Mick Plath, lease the property from the Sisleys.
2. On or about February 13, 2006, the City received a complaint about trees having been cut on the subject property. The City posted a Cease and Desist notice at the property on February 23, 2006, requiring all tree cutting, clearing and grading activity to cease immediately.
3. On March 1, 2006, Craig Salzman went to the site, and counted and measured the cut trees. He recorded the cut trees' diameters at that time. Mr. Salzman counted 9 "significant" trees (under KZC 95.10, trees that are at least six inches in diameter at breast height, or DBH) that had been cut. At least 12 additional trees had been cut.
4. On March 3, 2006, the City issued a notice of civil citation to James and Carolyn Sisley, the owners of the property, and to John Gilday, the tenant of the property. Another tenant at the property, Mick Plath, was not cited because the City determined that he had not cut the trees. The notice set a monetary penalty of \$9,000.00 (based on \$1,000 per significant tree removed) and required corrective action in the form of restoration of the trees according to the "tree credits" set forth in Table 95.35.1, KZC 95.35, for a total of 37 tree credits.
5. After issuing the notice of civil citation, the Code Enforcement officer determined that the actual number of significant trees removed was 8. The officer also determined that the appellants should be given "credit" for two of the trees, under KZC 95.20.1. Thus, the monetary penalty was reduced to \$6,000, and the restoration plan was set at 28 tree credits.
6. The Sisleys did not give Mr. Gilday permission to cut any trees on the property and did not know he was removing the trees. The lease between Gilday, Plath and the Sisleys calls for the lessees to place crushed stone for a "cleared area north of the north parking area in wooded area" on the subject parcel.

7. Mr. Salzman and the City Arborist visited the site again on March 27, 2006. There were no signs that the trees which were cut, or those that remained on the site, were diseased or weak or otherwise presented hazards.

8. No tree removal permits were applied for by any of the appellants, prior to the cutting of the trees on the site. None of the appellants contacted the City within seven days of the cutting to request approval of the cutting as an emergency tree removal under KZC 95.20.

9. It is not disputed that Mr. Gilday cut the trees.

10. Several days prior to cutting the trees, Mr. Gilday had a meeting with other City staff concerning a different site. During the meeting, Mr. Gilday asked about what kind of enclosures or other special treatment needed to be accorded to cottonwoods and alder trees. Mr. Gilday stated that he had interpreted staff's remarks to mean that these species of trees did not need to be protected in any way. However, there is no evidence that staff told him he could remove species of these trees from any site without a permit.

11. At hearing, the City noted that it had cited the Sisleys as property owners, but had determined that the Sisleys had not granted permission to Mr. Gilday to cut the trees.

12. KZC 95.15 provides that no person shall remove any significant tree on any property within the City except City right-of-way, without first obtaining a tree removal permit or unless the activity is exempt under KZC 95.55.20. The Code defines a "significant tree" as one that is at least six inches DBH. KZC 95.10.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant KZC 95.55.10 and Chapter 170 KZC. Under KZC 95.55, the City has the burden of proof by a preponderance of the evidence that a violation has occurred.

2. Appellant Gidlay cut eight significant trees and did so without applying for or obtaining a permit, in violation of KZC 95.15. The exemption for emergency tree removal was not shown to apply in this case. No request supported by evidence to show that the trees were a hazard, was made within seven days to the City for an exemption as required under KZC 95.55.20. Furthermore, the evidence in this record shows that the removed trees were not diseased or otherwise hazardous.

3. Although Mr. Gidlay believed that City staff and Mr. Sisley had implicitly approved the tree removal, that belief was not reasonable and does not provide an excuse in this case. There is no evidence that any City employee told Mr. Gidlay or even suggested to him that he did not need to obtain a tree removal permit for the trees that he removed. His agreement with Mr. Sisley to lay gravel or clear an area also does not show

that Mr. Sisley directed Mr. Gilday to remove trees without first obtaining necessary permits.

4. Mr. Gilday also argued that he did not intend to violate the law and that the City's Arborist refused to take his calls about remediation. Neither of these factors in this case would provide a defense to the citation, or mitigation for the penalties that are set under KZC 95.55.

5. The Sisleys were not shown to have been aware of or to have approved the removal of the trees. As property owners, however, they may still be held responsible for the failure to take corrective actions that are ordered, e.g., KZC 95.55.9 provides that the failure to restore or otherwise cure property following a violation, may result in a fine that is assessed against the property owner or occupant.

6. The City has shown by a preponderance of the evidence that the violation occurred. The monetary penalty assessed against the appellants, \$6,000 for six of the eight significant trees removed, is authorized by KZC 95.55 and should be affirmed. The corrective action of replacing the equivalent of 28 tree credits, is also authorized and will be ordered.

Decision and Order

Civil Citation ENF06-030 issued to the appellants, John Gilday, and James and Carolyn Sisley, is hereby affirmed. The monetary penalty is set at \$6,000.00 and the appellants are responsible for restoring 28 tree credits on the property. The penalty shall be paid to the City Clerk by _____, fourteen (14) calendar days following the date of the issuance of this decision. A restoration plan meeting the standards of KZC 95.55.8 shall be submitted to the Code Enforcement Officer and the City Arborist for approval, and will include a maintenance bond to be recorded with the County on the title to the property, for a period of three years to ensure survival. The corrective actions, including submission of the restoration plan, are due by _____, fourteen (14) calendar days following the date of issuance of this decision, unless a longer time period is established by the Planning Official.

Entered this 25th day of April, 2006.

Anne Watanabe
Hearing Examiner Pro Tem

Concerning Further Review

KZC 95.55.11.d states: “The decision of the Hearing Examiner may be reviewed in King County Superior Court using the standards set forth in RCW 36.70.130. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner (see Chapter 36.70 RCW for more information).”