

**FINDINGS AND DECISION OF THE HEARING EXAMINER  
FOR THE CITY OF KIRKLAND**

In the Matter of the Appeal of

File No. **TRE12-01694**

**LORI COX**

from a tree removal decision issued by the  
Director of the Planning and Community  
Development Department

**Introduction**

The Director of the Department of Planning and Community Development issued a decision denying permission to remove two Black Cottonwood trees from private property. The applicant, Lori Cox, appealed the denial.

The appeal hearing was held on September 6, 2012, before the Hearing Examiner (Examiner). The Appellant represented herself, and the Director was represented by Scott Guter, Project Planner. The Examiner inspected the site following the hearing.

For purposes of this decision, all section numbers refer to the Kirkland Zoning Code (KZC or Code) unless otherwise indicated. After considering the evidence in the record and inspecting the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

**Findings of Fact**

1. The subject property is addressed as 10815 101<sup>st</sup> Place NE in Kirkland. It is Lot 6 of the Chateau Point Short Subdivision and is zoned RS 12.5, a low density residential designation.
2. The property is 17,621 square feet in size and is improved with a single-family residence. It includes a Landscaped Greenbelt Easement related to a Western Red Cedar tree located near the east property line and a Natural Greenbelt Protective Easement related to a wetland buffer. *See* Exhibit 1, exhibit E.<sup>1</sup>
3. A grove of Black Cottonwood trees that includes the two proposed for removal is located within the wetland buffer. The two trees are shown on the site plan in Exhibit 1,

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<sup>1</sup> The Staff Report, which was originally marked as Exhibit A, includes several attachments. The attachments are labeled as “exhibits” B through F rather than being numbered. Consequently, the Staff Report has been relabeled as Exhibit 1, and Appellant’s exhibits, labeled B, C and D at the hearing, have been relabeled as Exhibits 2, 3 and 4 respectively.

exhibit A as numbers 3 and 4 and are the trees closest to the maintained backyards of the Appellant and her neighbor to the west.

4. The June 20, 2012 report from the Appellant's arborist states that the two Black Cottonwood trees have phototropic lean of approximately 15 degrees from vertical because of the close proximity of the other Black Cottonwood trees in the grove. There is no indication in the report that the trees are unhealthy or have structural defects. The report states that the trees are "nuisances right now, but have the potential to become hazardous because of the proximity to constantly inhabited targets and due to species characteristics in the future." Exhibit 1, exhibit A.

5. The City's contract Urban Forester did a peer review of the Appellant's arborist report and confirmed that the trees are young and healthy. She also noted that the most common mode of failure for mature Black Cottonwood trees is branch failure rather than whole tree failure. Exhibit 1, exhibit A at 7; Exhibit 1, exhibit F.

6. Cottonwood trees grow quickly. The Appellant's neighbor to the west reports that the trees in the grove are already approximately 80 to 100 feet in height, and that several lean directly toward his residence. Exhibit 3.

7. The Appellant has asked to remove the trees and leave them as snags, or woody debris, in the wetland buffer, thereby improving the habitat structure of the buffer. Because of the fast-growing nature of the trees and their current phototropic lean, she is concerned that they will soon present a hazard to her own and her neighbor's residences.

8. The Code allows removal of "hazard trees" and "nuisance trees" by private property owners if a tree risk assessment by a qualified professional confirms that the trees "meet the definition of a nuisance or hazard tree". KZC 95.23.5.d.1.

9. A "hazard tree" is defined in KZC 95.10.7 as

- a. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
- b. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure); and
- c. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

10. A "nuisance tree" is defined in KZC 95.10.10 as a tree that

- a. Is causing obvious physical damage to private or public structures, including but not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, or roof; or
- b. Has sustained damage from past maintenance practices.

The problems associated with the tree must be such that they cannot be corrected by reasonable practices including but not limited to: pruning of the crown or roots of the tree, bracing, and/or cabling to reconstruct a healthy crown.

### **Conclusions**

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KZC 95.23.4.b, which provides that the applicant/appellant has the burden of proving that the City made an incorrect decision.
2. There is no evidence in the record that the two Black Cottonwood trees are causing obvious physical damage to structures or have sustained damage from past maintenance practices, the definitional criteria for "nuisance tree" under KZC 95.10.10. Therefore, it is clear that the reference in the Appellant's arborist's report to the trees being "nuisances right now" does not constitute a professional opinion that the trees "meet the definition of a nuisance" tree, as required under KZC 95.23.5.d.1 for them to be removed. *See* KZC 95.10.10.
3. The Appellant argues that the City's Urban Forester stated only that the trees were not diseased, but failed to address whether they have "structural defects" that make them "subject to a high probability of failure" and thus, meet the definition of "hazard tree". KZC 95.10.7.a. The Appellant contends that the phototropic lean of the two trees constitutes a structural defect that brings them within the Code's definition of "hazard tree". But there is no objective, scientific evidence in the record to support this contention. Neither arborist addressed the issue of "structural defects" separately from the matter of the trees' general health. From their reports, it is clear that both are familiar with the details of the "hazard tree" definition. Both concluded that the trees were healthy and did not presently constitute hazard trees. The Examiner will not assume that they reached this conclusion without considering all facets of the definition.
4. The Appellant and her arborist stress the importance of adding woody debris to the wetland buffer which presently has little of it. While this is undoubtedly a laudable goal, in this case, it is at odds with the Code, which requires that the two Black Cottonwood trees meet the criteria for a "hazard tree" or "nuisance tree" before removal is authorized.
5. The Appellant's evidence of City removal of public trees of unknown health is not relevant to the issues raised in this appeal.
6. The subject trees did not meet the criteria for a "hazard tree" or "nuisance tree" under the Code, and the Director's decision should therefore be affirmed.

### **Decision**

The Director's decision denying removal of the two Black Cottonwood trees is affirmed.

Entered this 11<sup>th</sup> day of September, 2012.

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Sue A. Tanner  
Hearing Examiner

### **Exhibits**

The following exhibits were entered into the record:

- Exhibit 1 Department's Advisory Report with 6 attachments
- Exhibit 2 Letter of 9/1/12 from Justina Kraus in support of appeal
- Exhibit 3 Letter of 9/5/12 from Scott Harrison in support of appeal
- Exhibit 4 Photographs, and documents from newspaper websites showing City removal of public trees

### **PARTIES OF RECORD:**

Applicant/Appellant: Lori Cox  
Department of Planning and Community Development

### **Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

Chapter 95 KZC does not provide for review of the Hearing Examiner's decision on an appeal under KZC 95.23.4. However, the decision likely qualifies as a "land use decision" under RCW 36.70C.020, and the appeal process under KZC 95.23.4 most resembles a Process I appeal under Chapter 145 KZC. Concerning judicial appeals of decisions on Process I applications, KZC 145.110 reads as follows: "The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW."