

## SEATTLE URBAN FORESTRY COMMISSION

Weston Brinkley (Position #3 – University), Chair • Sandra Whiting (Position #2 – Urban Ecologist) Vice-Chair  
Steve Zemke (Position #1 – Wildlife Biologist) • Sarah Rehder (Position #4 – Hydrologist)  
Stuart Niven (Position #5 – Arborist – ISA) • Michael Walton (Position #6 – Landscape Architect – ISA)  
Joanna Nelson de Flores (Position #7 – NGO) • Andrew Zellers (Position #8 – Development)  
Craig Johnson (Position #9 – Economist) • Bonnie Lei (Position #10 – Get Engaged)  
Whit Bouton (Position #11 – Environmental Justice) • Jessica Jones (Position #12 – Public Health)  
Shari Selch (Position #13 – Community/Neighborhood)

*The Urban Forestry Commission was established to advise the Mayor and City Council concerning the establishment of policy and regulations governing the protection, management, and conservation of trees and vegetation in the City of Seattle*

**March 13, 2019**

### **DRAFT Meeting Notes**

Seattle Municipal Tower, Room 2750 (27<sup>th</sup> floor)  
700 5<sup>th</sup> Avenue, Seattle

#### **Attending**

##### Commissioners

Sandra Whiting – Vice-Chair  
Craig Johnson  
Bonnie Lei  
Joanna Nelson de Flores  
Stuart Niven  
Shari Selch  
Michael Walton  
Steve Zemke

##### Staff

Sandra Pinto de Bader - OSE  
Clayton Antieau – SDCI  
Edwin Duran - SDCI  
Deborah McGarry - SDCI  
Diane Davis – SDCI  
Chanda Emery - SDCI  
Margaret Glowacki – SDCI  
Art Pederson – SDCI

##### Absent- Excused

Weston Brinkley – Chair  
Whit Bouton  
Jessica Jones  
Sarah Rehder  
Andrew Zellers

##### Guests

Elijah Selch

##### Public

Jim Davis  
Kelly Wilkinson  
Deb Powers

**NOTE: Meeting notes are not exhaustive. For more details, listen to the digital recording of the meeting at: <http://www.seattle.gov/urbanforestrycommission/meetingdocs.htm>**

#### **Call to order**

Steve Zemke, acting as chair, called the meeting to order.

#### **Public comment**

Jim Davis - he is looking forward to the SDCI presentation. He was looking at the canopy cover report and looking at the number of groves and large trees in the City. There is no mention about the tree canopy offsets in the City of Seattle.

#### **SDCI briefing**

Maggie kicked off the briefing giving with a general picture of the department. SDCI, as stewards and regulators of land and buildings, preserve and enhance equity, livability, safety, and health of our communities.

SDCI services include:

- Reviewing permits for construction
- Inspecting projects that have proper permits
- Enforcing rules for rental housing, land use, trees, shoreline, tenant relocation assistance, just cause eviction, vacant buildings and noise.

SDCI Organization

- Have +/- 400 staff
- Occupy 4 floors in SMT
- Have different divisions
  - o Land use
  - o Zoning
  - o Engineering services
  - o Inspections
  - o Enforcement

SDCI regulations:

Codes they enforce include:

- Building, Electrical, Energy, and Mechanical Codes
- Housing & Building Maintenance Code
- Land Use Code including Shoreline Master Program
- Environmental Protection and Historic Preservation Code
  - o SMC Chapter 25.11 – Tree Protection
  - o SMC Chapter 25.09 – ECA regulations

Urban Forestry

SDCI responsibility is to develop, implement, and enforce the regulations

- Code development
  - o Tree Protection
  - o Environmentally Critical Areas
  - o Shoreline Master Program
- Implementation
  - o Four subject matter experts in Land Use Services available to review/consult with other reviewers
  - o Review for hazardous trees
  - o Review permits (MUP and Building permits)
- Enforcement
  - o Inspectors assigned geographically
  - o Investigate complaints
  - o Determine if violation occurred
  - o Levy penalties
  - o Non-compliance cases are referred to the Law Department

2019/2020 Code development

- Status of Executive Order implementation

- Director’s Rule 17-201, Calculating Tree Valuations and Civil Penalties for Tree Protection Code Violations
- Defines the penalties for illegal removal of trees
- Effective May 14, 2018
- New website coming soon.
- Status of Tree Ordinance update
  - Draft ordinance Determination of Non-Significance withdrawn
  - SDCI focus on Executive Order
  - Draft MHA Resolution includes tree protection
- Draft MHA resolution – tree protection
  - Retain protection and expand definition of exceptional trees
  - Create a permit process for tree removal of significant trees (larger than 6” DBH)
  - Require replacement for significant tree removal
  - Simplify tree planting and replacement requirements
  - Maintain tree removal limits in single-family zones
  - Explore the feasibility for in-lieu fee option for tree planting
  - Track tree removal and replacement throughout Seattle
  - Provide adequate funding to administer and enforce tree regulations

Chanda Emery walked the group through the intake process on the SDCI website.

UFC question: Can you search for example for “hazardous tree” and get all the permits that have to do with hazardous trees?

Response: The system has a universal search function. One could look at results of the search but would need to use specific codes such as TA for Hazardous Trees. Do not have a tree in-tree out database yet.

***NOTE: Meeting notes are not meant to capture the whole conversation. For more details, specifically for Q and A, refer to the digital recording of the meeting at:***

***<http://www.seattle.gov/urbanforestrycommission/meetingdocs.htm>***

#### Code Implementation Process

##### Land Use Discretionary Reviews Involving Trees

- Land use discretionary reviews involving trees
  - Development applications for projects on parcels involving certain ECAs
    - Master Use Permits
    - Phased Permits
    - Construction Permits
  - Stand-alone ECA Restoration Plan applications
  - Stand-alone Hazard Tree Removal Applications
- Implementing the following sections of the Seattle Municipal Code:
  - SMC 25.09 (ECAs)
    - 25.09.065 (Mitigation sequencing)
    - 25.09.070 (Restoration/revegetation)
  - SMC 25.11 (Trees)
  - Director’s Rule 16-2008 (Exceptional Trees)
  - Director’s Rule 13-2018 (Herons)
  - Executive Order 03-05 (Two-for One tree replacement for City Departments)

Land use discretionary reviews:

General approach (what to review)

- Trees on parcel or street trees
- Mis-identification or mis-measurement of trees
- Missing or mis-mapped trees
- Exceptional tree status; groves
- Hazard tree status and correct documentation
- ECA restoration plan/tree replacement
- Basic Tree Protection Area intrusion and correct documentation

Resources reviewers use:

- Application materials
  - o Site plan
  - o Plan set
  - o Arborist report
- SDCI site photos
- Aerial photography
- Google Street View
- Site Visits (rarely done due to capacity constraints)

Challenges: regulatory side

- General departmental consistency in implementing tree and ECA regulations
- Lack of access to on-call consultants
- Interpretation of “33% Intrusion” rule for Basic Tree Protection Areas
  - o How to apply
  - o To which trees does it apply -all trees to-be-retained or just Exceptional trees?
- Jacobson (2006) 2<sup>nd</sup> edition used to establish Exceptional size thresholds is now dated.
- Discrepancy (and poor science) in determining Basic Tree Protection Area.
- DR-16-2008: inclusion of this phrase “potential damage to existing or future targets...”
- Inconsistent and unclear language among SMC 25.09 and 25.11, and Tip 331b (Hazard Trees) (Regulated trees should be regulated the same whether inside or outside ECAs).
- No provision for vista-creation or maintenance in ECAs.
- Lack of City-wide Urban Tree Manual.

Challenges: applicant side

- General lack of understanding of tree and ECA regulations
- Inconsistent and poor arborist reports
  - o Tree inventory and assessment report (other jurisdictions use this).
  - o Tree preservation, protection, and replacement plan (other jurisdictions use this).
- Tree mis-identifications.
- Trees measured <1-inch short of size threshold for Exceptional.
- Mis-use / abuse of ISA TRAQ methods.
- Mis-application of DR 16-200, especially with regard to groves and application of “Hazard” to exceptional trees.
- Hazard Tree Issues:
  - o SDCI requires ‘clear and convincing evidence.’
  - o Removal as a last resort.
  - o No dispute resolution process.
  - o Dead and dying trees.
- Lack of City-wide urban tree manual.

UFC question: you didn't mention 25.11.090 saying that all trees larger than 24" would need to be replaced.  
Response: SDCI does regulate to 25.11.090 and look for the replacements. When the proposal shows that they plan to replace the trees, then SDCI approves the permit. This would require inspections and enforcement which they don't have the capacity to inspect and enforce tree replacement. This piece is not being tracked.

The UFC emphasized that the Tree Protection Executive Order 2017-11 determined that tree loss and replacement need to be tracked by SDCI.

UFC question: You mentioned having a 5-month backlog. Do you have a goal?

Response: The department does assign due dates but the backlog is not considered when assigning them. They work on what's most overdue first, but they also have priority projects that cut into the line. One of the simplest solutions would be a Tree Manual for regulation and tree care. More staffing would help cut down on the backlog. Existing workload could use two full time staff.

Deb McGarry shared a case study in Ballard. Deb shared the plans and talked about the exceptional trees on the site.

The corrections process tells the project what things need to change. Examples are:

- Add fence with dimensions.
- Add detail.
- Can't have paved path in the tree's inner root zone.
- Move utility line.

Hazard Tree Removal Applications:

- Exceptional trees.
  - o TRAQ high risk. They require an arborist report along with the tree risk assessment form.
  - o Declining or likely to decline with construction.
  - o Examples (not actual applications).
- Has dropped limbs in the past.
- Near powerlines, driveway, street.
- Arborist report says that falling branches in the future pose a high risk.
- Do we approve?

More hazard tree examples

- May not qualify as high hazard.
- Tree is in clear decline.
- Do we approve?

Sometimes clearly "hazardous" trees can be retained with willing owners.

Enforcement:

- Tree protection code (SMC Chapter 25.11) – purpose is to protect and encourage retention of trees, preserve City character by preventing removal of trees.

- ECA regulations (SMC Chapter 25.09) – purpose is to avoid and mitigate adverse environmental impacts, preserve the ecological functions of the ECAs.

Tree cutting prohibitions:

Chapter 25.11

On all lots: can't remove exceptional trees.

On Undeveloped lots:

- Can't remove trees greater than 6" DBH.
- Can't remove exceptional trees.

On Most residential and commercial lots (except for single family <5,000 SF):

- No more than 3 trees greater than 6" diameter can be removed each year.
- Can't remove exceptional trees.

Emergency or hazardous trees:

- Must obtain an exemption from SDCI before tree removal.

Chapter 25.09

- Can't disturb or remove trees or vegetation in most ECAs, especially landslide-prone areas.
- Can't top trees anywhere.
- Need a permit or exemption from SDCI for most work in an ECA.

Tree cutting: how do we enforce?

Complaints are received by phone or online [www.seattle.gov/sdci](http://www.seattle.gov/sdci)

Information obtained from callers:

- Where? Address? Visible from ROW? Vacant lot?
- What? Species, tree size?
- When? Is it still happening?
- Who? Tree company name? who hired?

Tree cutting complaints:

Steps involved include the following:

- Inspector visits site ASAP, document violation
- May issue stop work order if still happening
- Documentation – photos, statements, measurements
- Evaluation – consultation with SDCI arborists

Supporting a tree cutting violation:

Location issues:

- Any property line issues.
- Is it on public ROW? (refer to SDOT).
- Is it in an ECA? Zoning?
- Is it undeveloped or vacant lot?

Quality of evidence issues:

- First-hand observation? 2<sup>nd</sup> or 3<sup>rd</sup> party info?

Who is responsible?

- Ownership research – tax records
- Information on tree company if known
- Someone other than the owner

Applicable code?

- How many trees were cut? What type? How big? Exceptional tree? Over 6"?

## Exceptional trees

### Code definition (SMC 25.11.020):

- “a tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource, and is deemed as such by the Director according to standards promulgated by the SDC.”

### Director’s Rule 16-208 – designation of exceptional trees:

- Trees over 30” almost always deemed exceptional.
- Smaller trees may be exceptional depending on species.
- Tree groves may be exceptional even if individual trees would not be exceptional.

## Evidence challenges

### Scenario:

What if we can’t get close enough to view the tree without trespassing? What if the tree is just a stump or the stump has been ground up by the time we get there?

### Solutions:

- Resources – we use whatever is available to determine existing conditions, species, and size:
  - o GIS, Google, Bing, Zillow, Redfin, tax record photos, neighborhood photos, statements.
- Standard of proof: is “more likely than not” (preponderance of evidence).

## Penalties:

### Chapter 25.11 (Tree code):

Per day penalties (up to \$500/day).

Civil penalties (equal to appraised tree value can be very expensive).

- ISA Guide for Plant Appraisal (industry manual).
- Director’s Rule 17-2018, Calculating tree valuations and civil penalties (lay inspectors using cost approach/trunk formula).

### Triple penalties:

- For willful and malicious tree cutting.

### Restoration plan:

- May be required for environmental and property damages.

### Chapter 25.09 (ECA Regulations):

Per day penalties (up to \$50/day).

Additional \$5,000 per tree penalty (flat fee per tree).

### Additional penalties possible:

- For egregious or especially harmful work equal to value received for damage done.

### Restoration plan:

- May be required for environmental damages.

## Notice of Violation (NOV):

It’s an administrative order that says you did “X and you need to fix it by “X” date.

NOV’s under both codes can be contested.

- Director’s review: is in-house administrative review. Review officer evaluates evidence, looks for any inspection mistakes, considers owner’s defense.
- Director’s order – sustain, withdraw, or amend NOV.
- Appealable to Municipal Court available under Tree Code, not under ECA regulations.

What if the owner does not comply?

- Compliance: pay fine, restoration plan.
- Noncompliance: file refer to Law Department for collection of civil penalties.
- Civil penalties – go into General Fund.
- Law process – very lengthy, outcome uncertain, case may be settled prior to law referral.

Enforcement summary:

In the past few years approximately 7 per year before Code Compliance involvement. Approximately 40 per year in 201 (2/3 ECA regs and 1/3 tree code).

Appealed NOVs:

- Approximately 1/2 of City's NOV are appealed.
- Many violators say they were unaware of the rules or ill advised by realtor or tree company.

Not appealed NOVs:

- Enforcement is challenging.
- City must defend findings in court and sometimes cannot do so due to difficulty obtaining evidence.

**Letter RE: MHA Ordinance**

**ACTION: A motion to approve the letter as amended was made, seconded, and approved.**

**2019 UFC work plan** – move to next meeting

**Public comment**

None

**New Business**

None

**Adjourn**

**Public input:**

-----Original Message-----

From: David Moehring <dmoehring@consultant.com>

Sent: Thursday, March 14, 2019 8:19 AM

To: PRC <PRC@seattle.gov>

Cc: Pinto de Bader, Sandra <Sandra.Pinto\_de\_Bader@Seattle.gov>; Pederson, Art <Art.Pederson@seattle.gov>; DOT\_LA <DOT\_LA@seattle.gov>; Bagshaw, Sally <Sally.Bagshaw@seattle.gov>; O'Brien, Mike <Mike.O'Brien@seattle.gov>; Central Magnolia Neighbors <central-magnolia-neighbors@googlegroups.com>; Strauss, Daniel <Daniel.Strauss@seattle.gov>

Subject: Can not remove Exceptional tree

Seattle Public Resource Center:

Two Exceptional trees and 3 other significant trees to be removed once again without patrol. This is ironic after SDCI gave their sales pitch to the Urban Forestry Commission yesterday how they are doing their best to maintain and manage Seattle's Urban Forest.

The design proposal is available online. Image of rowhouses along 34th Ave W are attached. (3408 34th Ave W will be reviewed on April 5th and the functionally



related development on the same lot but labeled 3412 34th Ave W will be reviewed on April 12. Why two separate reviews: waste resources and money in order to play the game) : - )

Where is the architect and arborist collaboration on this over-development of 9 marketrate townhouses where only 5 are allowed by code? (LR1 zoned Lot max at 1 dwelling for every 1600 sq ft of lot area.)

The Big problem is the Proposal to remove one Exceptional cypress tree at the south lot line. That is against the Seattle Municipal code and the directors rule that protects Exceptional trees. The design proposal tried to justify the tree's removal by stating it would "protect the neighbors". What does that mean?!?

Also, the Exceptional tree's critical root zone and tree canopy at the alley is also being sliced into and will not survive the escalation and construction . 3 other large trees removed. Not good... this development should not allowed as it completely ignores any small part of the existing tree ordinance.

Please look into this one. Thank you!

David Moehring

Member of TreePAC

Land use Committee chair of Magnolia Community Council [Dmoehring@consultant.com](mailto:Dmoehring@consultant.com)





# 3033687  
 # 3033688  
 3408-3412 34th Ave W  
 STREAMLINED DESIGN REVIEW  
**NEIMAN TABER**  
 ARCHITECTURE FOR THE NORTHWEST

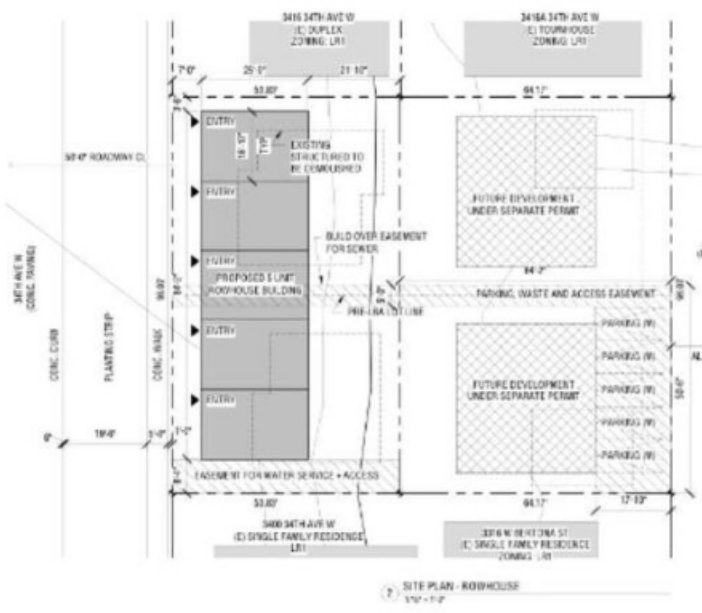
**PROJECT INFORMATION**

**ADDRESS:** 3408 34TH AVE W  
SEATTLE, WA 98116  
**APR:** 88710-1-16  
**LOT AREA:** 5,188 SF (POST IBA)  
**ZONING:** LRI  
**OVERLAYS:** NONE

**LEGAL:** THE W 33.83 FT OF THE 5.18 FT OF LOT 16, ARE THE W 33.83 FT OF LOT 15, AND THE W 33.83 FT OF THE 8.30 FT OF LOT 14, BLOCK 15, PLEASANT VALLEY ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 1148 KING COUNTY, WA.  
**PROPOSAL:** DEMOLISH ALL STRUCTURES ON SITE, CONSTRUCT 5 UNIT ROWHOUSE BUILDING WITH OFF-ITE PARKING, PROJECT CONTINGENT ON LOT BOUNDARY ADJUSTMENT  
**PROPOSED GFA:** 8,202 GFA

**CONTACT INFORMATION**

**OWNER:** GLEN FROELICH  
1900 W. WICKERSON ST  
SEATTLE, WA 98116  
**ARCHITECT:** NEIMAN TABER ARCHITECTS, PLLC  
1421 34TH AVE, STE 333  
SEATTLE, WA 98102



SITE PLAN - ROWHOUSE  
 1/8" = 1'-0"

**NEIMAN TABER**  
 ARCHITECTURE FOR THE NORTHWEST  
 1421 34th Ave W, Suite 333, Seattle, WA 98102

**FROELICH - 34TH AVE W**  
 3408 34TH AVE W

Scale: 1/8" = 1'-0"  
 No. 81228