



City of Kirkland
Planning and Building Department
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STAFF REPORT

To: Kirkland Hearing Examiner
From: Tim Coye, Development Review Arborist
Date: March 18, 2025
File: APPEAL OF CITY'S DECISION DENYING TREE PERMIT NO. TRE24-03938
Hearing Date and Place: March 25, 2025
City Hall Council Chamber
123 Fifth Avenue, Kirkland

I. INTRODUCTION

- A. Permit No.: TRE24-03938
- B. Permit Applicant: Cornel Termure
- C. Appellant: Cornel Termure
- D. Actions Being Appealed: The Planning Official decision denying the removal of a 30" pine tree and 18" deciduous tree (see Attachment 1).
- E. Summary of Issues Under Appeal: The Appellant removed trees from his property without first seeking a permit (or permit exemption) from the City, as required by the Kirkland Zoning Code (KZC). After the City's discovery, the Appellant sought an after-the-fact tree permit from the City, claiming the trees had been hazard trees and that he was allowed to remove them. The City denied his after-the-fact request for a tree permit, finding there is not sufficient evidence to indicate the trees were either hazard or nuisance trees pursuant to KZC 95.10.17 (see Attachment 1). The Appellant disputes the Planning Official's decision (see Attachment 2). The specific issues the Appellant identified are summarized below and analyzed in Section V.

II. RULES FOR THE APPEAL HEARING AND DECISION

Pursuant to Chapter 145 of the Kirkland Zoning Code (KZC), the Hearing Examiner must consider the appeal in an open record appeal hearing. The scope of the appeal is limited to the specific elements of the Planning Director's decision disputed in the letter of the appeal, and the Hearing Examiner may only consider comments, testimony, and argument on these specific elements.

Only the Appellant/Applicant and City of Kirkland may participate in this appeal hearing. The Hearing Examiner, in their discretion, may ask questions of the Appellant/Applicant or staff regarding facts in the record, and may request oral argument on legal issues. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

The person filing the appeal has the responsibility of convincing the Hearing Examiner that the City made an incorrect decision.

After considering all arguments within the scope of the appeal submitted in writing and given as oral testimony at the hearing by persons entitled to participate in the appeal, the Hearing Examiner shall take one of the following actions:

- Affirm the decision being appealed;
- Reverse the decision being appealed; or,
- Modify the decision being appealed.

The Hearing Examiner shall issue their decision within 90 calendar days of the date the letter of appeal was filed. *Based on an appeal filing date of January 9, 2025, the Hearing Examiner's decision shall be entered by April 9, 2025.*

The decision by the Hearing Examiner is the final decision of the City.

III. SITE DESCRIPTION

- A. Site Location: 13506 132nd Ave NE (see Attachment 3)
- B. Zoning and Land Use: The subject property is zoned RSA 6, Low Density Residential and is 11,547 square feet. The site is currently developed with a single-family home.

IV. BACKGROUND

A. Tree Permit History

1. Application

- a. Based on aerial imagery (see Attachment 4), on April 29, 2023, tree removal was performed on the subject property without proper permits being obtained from the City of Kirkland.
- b. On April 26, 2024, Mr. Termure, the owner of the subject property and an individual with permitting history¹ with the City, submitted a development permit application (LSM24-03245) for the subject property.
- c. In May 2024, City of Kirkland staff discovered the unpermitted tree removal of the 30" pine tree.
- d. Mr. Termure submitted an after-the-fact tree removal permit application on May 17, 2024, solely for the removal of one tree, a 30" pine tree, which he claimed was a hazard tree (see Attachment 5). This application included an informal hand-written document and an ISA² Basic Tree Risk Assessment Form from a certified arborist, dated May 16, 2024. The hand-written 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. No photographs of the tree or its alleged hazardous condition were included with the hand-written document or the Tree Risk Assessment Form.
- e. On June 11, 2024, the City discovered that additional trees had been removed from the property without a permit. At this time, the Applicant revised his tree removal permit application to also include one (1) 18" deciduous tree and three (3) apple trees.

¹ Mr. Termure's permitting history in the City of Kirkland includes a 2011 land use permit and to subdivide the subject property's parent parcel into three lots, thereby creating the subject property and the two parcels directly east of the subject property. All parcels in this short plat were developed and are still owned by Mr. Termure.

² ISA is the International Society for Arboriculture, which is the primary credentialing organization for professional arborists.

- f. Regarding the 18" deciduous tree, a photo of the stump was submitted to the City on June 13, 2024 (see Attachment 6). Note that this tree has subsequently been noted as an 18" dogwood in the Applicant/Appellant's documents and may be referred as a deciduous or dogwood interchangeably within this report.
- g. To date, the Appellant has not submitted any arborist report or Tree Risk Assessment Form for the deciduous/dogwood tree.
- h. To date, the Appellant has not submitted any photos of the 18" deciduous tree or 30" pine tree before they were cut to support his claim that they were hazard trees. Based upon the City's aerial review of these trees, they do not appear to be hazard trees.

2. Decision

- a. On July 12, 2024, the City's Development Review Arborist, Tim Coye, entered a decision to deny the tree permit for the 30" pine tree and 18" dogwood tree as the Applicant had provided insufficient evidence that the trees met the criteria of hazard or nuisance trees pursuant to KZC 95.10.17(b) or (e). The decision also noted that three (3) apples trees that Applicant has also removed from his property without a permit were not regulated trees as they appeared to be less than 6" in diameter (KZC 95.10.17.g) and were not subject to permitting.
- b. Upon receiving the City's decision, Mr. Termure asked the City to reconsider its decision.
 - (1) Mr. Termure visited Kirkland City Hall and met with Tim Coye, Code Enforcement Officer Samantha Condon, and Planning Supervisor Jon Regala to discuss what further action could be taken in order to change the City's decision. The City gave Mr. Termure the opportunity to submit any other evidence he had to substantiate the alleged hazard conditions of the trees.
 - (2) On July 25, 2024, Jacob Randall of New View Tree Service, the worker who removed the trees, called Tim Coye to discuss his recollection of the removal of the trees. He stated that the 30" pine had a crack near the top that added difficulty to the removal process, but he did not have any pictures of the tree prior to its removal to support his claim.
 - (3) On July 30, 2024, Mr. Termure emailed Tim Coye with two new documents (see Attachment 7) – an undated letter from his tenant, Spencer King, and an undated letter from Jacob Randall of New View Tree Service. Neither letter provided verifiable evidence to substantiate the alleged hazard tree conditions, though both documents provided self-serving conclusions that the authors thought the trees were hazard trees.
 - (4) Upon reviewing the new documents, Tim Coye informed Mr. Termure that the City's decision stands as originally issued on July 12, 2024. The City's decision remained a denial of the after-the-fact tree removal permit.

3. Appeal

- a. On January 9, 2025 Mr. Termure filed an appeal of the City's tree permit

decision.³

- b. Staff's response to the issues raised in the appeal is provided in Section V below.

B. Related Code References

Below is an inexhaustive list of pertinent code references, along with staff comments on how the code section applies to the subject property.

1. Tree Removal Allowances

- a. *Code Section: KZC 95.25.1*

Staff Comment: This section establishes the number of allowed trees and conditions by which trees may be removed without a permit. Even if a permit is not required, notification must still be provided to the City. Based on the size of the Mr. Termure's property (11,547 sf), three (3) trees would be allowed for removal per 12 months, provided at least three (3) regulated trees (i.e., 6" DBH) remain on the subject property (see KZC 95.25.1). In other words, the last two regulated trees on a property may not be removed without a permit. In Mr. Termure's case, the removed trees were in fact the last two trees on the property and were not eligible for removal as "allowances." In this circumstance, the trees must qualify as hazard or nuisance and be reviewed under a permit submittal (see specifically KZC 95.25.1.b).

- b. *Code Section: KZC 95.25.6*

Staff Comment: This section establishes that hazard or nuisance trees may be removed without counting toward tree removal allowances (see IV.B.1.a above) when the hazard or nuisance condition is supported by tree risk assessment prepared by a qualified professional. This section also details the standards a tree risk assessment must meet, the content required in the tree risk assessment, and the conditions by which the Planning Official may approve the removal of a hazard tree. In Mr. Termure's case, the documents submitted were prepared after the trees were already removed and are problematic as it relates to the preparation, content, and qualifications of the authors (see Section V.A below).

2. Hazard and Nuisance Tree Definitions

- a. *Code Section: KZC 95.10.17(b)*

Staff Comment: This section establishes the definition of a hazard tree as being a tree or part of a tree assessed by a qualified professional arborist as having an extreme or high overall risk rating using the ISA Tree Risk Assessment Qualification (TRAQ) method and meeting all the following criteria:

- Structural defects and/or disease which makes it subject to a high probability of failure;
- Proximity to moderate to high-frequency occupied targets, persons or property that can be damaged by tree failure; and

³The Hearing Examiner's December 16, 2024 decision on code enforcement case COM24-00187 originally gave Mr. Termure an appeal filing deadline of January 2, 2025. Mr. Termure attempted to file an appeal on January 2, 2025, but the City later deemed the filing untimely due to Mr. Termure's check being returned "NSF – Not Sufficient Funds" on January 6, 2025 and thus failure to pay the appeal fee. On January 8, 2025, the Hearing Examiner extended Mr. Termure's appeal deadline to January 13, 2025. On January 9, 2025, Mr. Termure successfully made payment of the appeal filing fee, and the appeal was deemed received as of January 9, 2025.

- The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

In Mr. Termure’s case, the trees were applied be removed as hazard trees, based on the potential safety issues that the trees posed to the house and parking area. The claims of hazard tree conditions, however, are unsubstantiated (see Section V.A below).

b. *Code Section:* KZC 95.10.17(e)

Staff Comment: This section establishes the definition of a nuisance tree as one meeting either of the following criteria:

- Is causing obvious physical damage to private or public structures, including, but not limited to, a: sidewalk, curb, road, driveway, parking lot, building foundation, or roof; or
- Has sustained damage from past maintenance practices or from naturally occurring events such as wind, ice or snow-loading.

Additionally, the problems associated with the nuisance 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, cabling to reconstruct a healthy crown.

In Mr. Termure’s case, the trees were not applied to be removed due to being nuisance trees. No evidence of nuisance tree conditions has been provided.

V. STAFF RESPONSE TO APPEAL

The Appellant submitted an appeal letter, which is signed and dated December 31, 2024 (see Attachment 2). The issues raised in the letter are summarized below, along with staff’s response to each issue.

A. *Appeal Issue:* The Appellant claims the trees were hazardous.

Staff response: This is not a new assertion. To this day no verifiable evidence has been provided that substantiates the alleged hazard tree conditions. Regarding the 30” pine tree, an ISA Basic Tree Risk Assessment Form was provided by Christopher Assaf, who is a certified arborist, but Mr. Assaf does not hold a Tree Risk Assessment Qualification (TRAQ) credential and, thus, he is not appropriately qualified to complete the ISA Basic Tree Risk Assessment Form. Additionally, Mr. Assaf’s documents are dated May 16, 2024 (see Attachment 5), which is more than one year after the trees were removed in April of 2023. A photo was provided of the stump of the 18” dogwood, however, no arborist report or tree risk assessment were provided to the City for this tree.

- **Assessment of the 30” pine tree**

Aside from Mr. Assaf not being qualified to complete the ISA Basic Tree Risk Assessment Form, the information entered in the form is problematic. A basic component of the Tree Risk Assessment is establishing a time frame of potential failure (e.g., 1 year, 3 years, 5 years, etc.). The time frame entered on the risk assessment form is “1 visit,” which does not provide any value in determining likelihood of failure. Furthermore, in the Risk Categorization chart, the likelihood of failure was noted as “imminent” and the likelihood of impacting the house was noted as “high.” Per the ISA’s Tree Risk Assessment Manual⁴, “imminent” likelihood of failure is defined as “*Failure has started or is most likely*”

⁴ The ISA Tree Risk Assessment Manual is available through the ISA and serves as the key training resource and companion publication for the Tree Risk Assessment Qualification (TRAQ) course.

to occur in the near future, even if there is no significant wind or increased load.” This applies to a tree that may fail at any given moment, for example, a tree that’s actively leaning with its root plate lifting from the surrounding soil. Trees that have imminent likelihood of failure are trees that are suitable for emergency removal. Nothing in the Mr. Assaf’s documents indicates that the 30” pine tree would be at risk of imminent failure. This is supported by the City’s review of aerial photography of this tree over the years (see Attachment 8). Mr. Assaf’s Risk Categorization (which he is not qualified to complete) seems highly inaccurate.

Additionally, the primary condition of concern for the 30” pine tree was a codominant union with a large horizontal branch. The tree’s exposure to the wind was cited as an additional factor for probability of failure. Satellite imagery shows that the tree has grown in the same conditions since at least 2005 (see Attachment 8) and therefore had adapted to the wind exposure. Branches may fall in a wind event, but that is a regular occurrence with all trees and does not constitute a hazard condition. The common method to reduce risk of large branches failing is to prune them. The report baldly states that trimming would not suffice for this tree, but there is no evidence to support this statement; i.e., no evidence was submitted to support the contention that pruning the horizontal branch was infeasible.

- **Assessment of the 18” dogwood**

A written statement regarding the 18” dogwood tree’s condition was given by Jacob Randall of New View Tree Service (see Attachment 7). Mr. Randall is not a certified arborist or qualified tree risk assessor; he simply works for a local tree removal company. While the submitted photograph of the remaining stump shows a moderate area of decay, it is insufficient evidence that the tree would have met the hazard criteria. Many trees live for years with some amount of heartwood decay without issue and the amount of decay present in the stump does not indicate that the tree would have been structurally compromised. The photo of the stump is the only photograph that was provided to the City. Aerial imagery from 2005, 2019, and 2021, prior to removal of the tree, indicates that the tree was still living and in fair to good condition when it was cut down (see Attachment 8). It had likely been living with moderate decay present for many years before then.

To this day, no evidence has been provided to substantiate the claims made by the Appellant that the 30” pine tree and 18” dogwood tree met the hazard tree criteria. The documents provided are problematic and unreliable to verify the alleged hazard conditions of the trees.

B. *Appeal Issue:* The Appellant claims the City does not believe his arborist and accuses his arborist of lying.

Staff Response: The City does not suggest the Applicant’s arborist is lying. However, he is not qualified to fill out a Tree Risk Assessment Form. Furthermore, the Tree Risk Assessment and narrative provided by the arborist are dated May 16, 2024, more than one year after the trees were removed and disposed of. It is not typical to fill out a Tree Risk Assessment after a tree has been removed, certainly not more than a year later. Furthermore, the arborist narrative and Tree Risk Assessment Form do not include any photographic evidence verifying the conditions alleged in the documents.

The purpose of a tree risk assessment is to outline the conditions of the tree and the potential of risk that it poses to nearby targets. It is intended to provide a reference to the client to inform them of risk and options available to reduce the risk. Removal of a tree is the last resort to reduce risk. Accordingly, KZC 95.10.17.b includes risk

reduction assessment as a criteria in the definition of a “hazard tree.” A Tree Risk Assessment filled out after-the-fact is not helpful to a client in making any tree removal decisions.

Aside from the arborist’s documents being questionable, the permitting process requires that these documents be reviewed prior to permitting the tree for removal. This is often referred to as a “peer review” and is typical in permitting processes that rely on qualified professional assessments. With the trees removed prior to the City even receiving a permit application, there is no way to verify the conditions alleged by the Applicant’s arborist. Not only are the physical trees removed, but the Appellant also did not provide any photographic evidence substantiating the alleged hazard tree conditions. Finally, their claims that the trees were hazardous is inconsistent with aerial photos of the trees that the City has reviewed.

- C. *Appeal Issue:* The Appellant claims the trees threatened his tenant’s safety.

Staff Response: The City takes hazard trees and community safety seriously. However, all tree removal in the City is subject to KZC Chapter 95, which includes a codified permitting practice, based on industry standard arboricultural practices, to allow proper tree removal. In instances where a tree poses an imminent threat to life or property, it may be removed without a permit (i.e., exempt), provided the City must be notified within seven days after the emergency tree removal with evidence of the threat to support removing the tree (see KZC 95.15.1). Here, if the trees had been removed due to legitimate fears of imminent failure, then the Appellant failed to comply with the emergency exemption requirement and still has not provided sufficient evidence to substantiate the removal as an emergency. The safety concerns alleged in the appeal letter remain unverified with no evidence of falling branches or other verifiable hazard tree conditions to justify removal of the trees – neither as emergency exemptions or permitted hazard trees removals.

- D. *Appeal Issue:* The Appellant claims the trees would have fallen in the November 2024 bomb cyclone windstorm.

Staff response: Whether or not the trees would have had failures in the November 2024 bomb cyclone event is speculative. The results of extreme weather events are impossible to predict. Healthy trees can experience failures and trees with structural defects can remain unaffected. This is nothing more than mere speculation.

VI. **STAFF RECOMMENDATION**

Per KZC Section 145.60 and 145.70, the person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Official made an incorrect decision.

The Planning Official decision was based on staff’s analysis for whether the 30” pine tree and 18” dogwood tree met the hazard or nuisance definitions in KZC Chapter 95.

Staff believes that none of the evidence provided, with either the permit application or appeal letter, substantiates the alleged hazard conditions. The City continues to be unable to verify that the 30” pine tree and 18” dogwood tree met the criteria required by KZC 95 to be approved for removal. **Staff recommends that the Hearing Examiner AFFIRM the City’s decision to deny the after-the-fact tree removal permit TRE24-03938.**

VII. **ATTACHMENTS**

1. City’s Permit Decision
2. Appeal Letter
3. Vicinity Map

4. Aerial Imagery dated April 29, 2023
5. Tree Removal Permit Application
6. Photo of Dogwood Stump
7. Additional Applicant Documents
8. Aerial Imagery from 2021, 2019, and 2005