

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

In the Matter of the Appeals of

**SHARON MORGAN and
MARTIN MORGAN**

File Number:
APL06-00001

From a Notice of Civil Infraction Issued
By the City of Kirkland, Department of
Planning and Community Development

Introduction

The City issued Notices of Civil Infraction to Sharon Morgan for cutting trees in violation of the Kirkland Zoning Code (ENF 05-253), and to Sharon Morgan, Martin Morgan and WRO Development LLC, for accumulation of junk and violation of parking area requirements on property owned by Sharon Morgan and Martin Morgan (ENF 05-259, -260 and -261). Sharon and Martin Morgan appealed the Civil Infractions. WRO Development LLC is an inactive corporation.

The appeals were heard by the undersigned Hearing Examiner on March 16, 2006, and May 4, 2006, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Parties represented at the hearing were the Appellant, by Jack A. Borland, attorney-at-law; 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.

Having considered the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal.

The following exhibits were entered into the record in this matter:

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| Exhibit A | Planning Department Memorandum to Hearing Examiner dated 3/16/06 and attached exhibits 1 through 26 |
| Exhibit B | Planning Department CD dated 2/27/06, with 26 pictures of the subject properties taken in August of 1998, August of 2000, January and March of 2001, March of 2004, and in 2006 |
| Exhibit C | King County GIS print-out showing tax parcel and taxpayer information for the subject properties |
| Exhibit D | Letter to Martin Morgan from State Farm Insurance dated 3/23/06 |
| Exhibit E | Print-out from Internet site "cars.com" showing potential vehicle values |
| Exhibit F | Picture – Front NE corner of 8249 122 nd Ave. NE and 4 vehicles |

Exhibit G	Picture – Volkswagen
Exhibit H	Picture – Volkswagen
Exhibit I	Picture – Volkswagen in front of residence at 8251 122 nd Ave. NE
Exhibit J	Picture – Parking area at 8251 122 nd Ave. NE with white van and brown Ford Mustang parked in it
Exhibit K	Picture – Back north corner of residence and property at 8241 122 nd Ave. NE
Exhibit L	Picture – Back of residence and property at 8249 122 nd Ave. NE taken from 8251 122 nd Ave. NE
Exhibit M	Picture – Closer view of tree stump shown in Exhibit L
Exhibit N	Picture – Brown Mustang and large RV parked on access drive to 8251 122 nd Ave. NE
Exhibit O	Picture - Front of property and driveway access for 8241 122 nd Ave. NE
Exhibit P	Picture – Front drive and cleared area at 8249 122 nd Ave. NE with two vans, 1 car, 1 box truck and 1 trailer parked on cleared area
Exhibit Q	Picture - Front driveway and front of property and residence at 8249 122 nd Ave. NE with black Cadillac parked in driveway
Exhibit R	Picture – East side of property at 8251 122 nd Ave. NE including area where trees were removed from the property, and showing outdoor storage of plastic buckets, crates and other containers, wood, garden tools, plastic gas containers, and waste and recycling containers
Exhibit S	(originally denominated Exhibit AA at hearing) Copy of memo to Craig Salzman dated March 21, 2006, re water usage at the subject properties

Findings of Fact

1. The properties that are the subject of these appeals are addressed as 8241, 8249 and 8251 122nd Ave. NE in Kirkland. The King County Assessor's parcel numbers for the properties are 1233100270, 1233100275 and 1233100276 respectively. Sharon Morgan owns the properties located at 8241 and 8249 122nd Ave. NE, although the King County Assessor's records show the owners of 8249 122nd Ave. NE as Sharon Morgan and WRO Development LLC. Martin Morgan owns the property located at 8251 122nd Ave. NE.

2. Martin Morgan and Sharon Morgan live in the residence at 8251 122nd Ave. NE. The residence at 8249 122nd Ave. NE is used by the Morgans for storage. The property at 8241 122nd Ave. NE is a former rental property that the Morgans have acquired and are repairing.

3. The properties are zoned RM 3.6 (multi-family residential with a minimum lot size of 3,600 square feet).

Tree Cutting

4. On November 15, 2005, a City Code Enforcement Officer (Officer) observed Mr. Morgan and a person the Officer recognized as a local tree cutter looking at a large cedar tree in the front yard of property at 8249 122nd Ave. NE. The Officer contacted the

Morgan's attorney and advised him that the City Code allowed only two "significant trees" to be cut on one lot in a 12-month period.

5. On November 21, 2005, the Officer received a telephone call informing him that the Morgans had had several trees cut on their properties. The Officer visited the properties, and in the back yard of 8249 122nd Ave. NE, saw four significant trees that had been cut. One of the trees showed signs of disease. Another tree that had been cut was in the front yard of the same lot and also showed signs of disease. The Officer took pictures of the remaining tree stumps.

6. On November 29, 2005, the Officer advised the Morgans by letter that the Code required a permit for removal of more than two significant trees and asked that, as an alternative to the City's taking enforcement action against them for the tree cutting, they submit a permit application for the trees that had been cut.

7. On December 6, 2005, the City received a complaint about trees having been cut on the subject properties, and inoperable vehicles and debris stored there.

8. On December 21, 2005, the Officer sent a Notice of Violation and Order to Correct to Sharon Morgan, stating the violation as cutting more than two significant trees on one lot in a 12-month period, and requiring that by December 28, 2005, a restoration plan be submitted for City review and approval, along with a three-year maintenance agreement, and that the required trees be planted. The Notice and Order were received on December 22.

9. On December 27, 2005, the Morgan's attorney delivered a letter to the City stating that only two significant trees had been removed from 8249 122nd Ave. NE, and thus, that there was no violation.

10. On December 28, 2005, the Officer sent a Notice of Civil Infraction to Sharon Morgan, for cutting more than two significant trees in a 12-month period from the 8249 property. The Civil Infraction stated that the violation had not been corrected by the date required in the Notice and Order, and assessed a monetary penalty of \$200 per tree against the Appellant for each day the violation continued from the date established for correction.

11. Ms. Morgan's attorney filed an appeal of the Notice of Civil Infraction on December 29, 2005.

12. At hearing, Ms. Morgan testified that she had two trees cut on each of the three Morgan properties on 122nd Ave. NE. Two of the trees apparently had been growing on or near the property line between 8249 and 8251. The Officer testified that if the Morgans had contacted the City arborist before removing the "property line trees," the arborist would have allocated one tree to each of the lots, in accordance with City policy. The Officer stated that he was willing to use the same allocation method, in which case, there would have been just one tree cut illegally at 8249 (excluding the diseased trees).

Use Violation

13. Photographs of the subject properties show that at least 11 vehicles, including a large RV, are parked in various places on the subject properties. (Exhibits B, F, G, P and Q) A neighboring property owner testified that there are actually 14 vehicles on the properties. At various times, the vehicles are parked within the side and rear setbacks on the properties and within the front yard at 8249, as well as in the driveways at all three properties.

14. There have been complaints filed and code enforcement actions taken on 8249 and 8251 over the last eight years. When the City has taken action on one of the properties, the vehicles parked on it have been moved to the other property.

15. Following the December 6, 2005, complaint letter, the Officer visited the properties, found what he considered to be Code violations and took photographs.

16. On December 7, the Officer sent a letter to the property owners, asking that they discuss the violations with the City and propose a comprehensive solution that encompassed all three properties.

17. On December 8, 2005, the Officer issued a Notice of Violation and Order to Correct for all three properties and sent it to Sharon Morgan and WRO Development LLC. The Notice and Order stated the violation as "General junkyard appearance, including storage of several vehicles, appliances, debris, an oversized RV and placing a temporary canopy shelter in violation of setbacks." It required the corrective action of removal of the debris, vehicles, RV and temporary structures from all three properties by December 13, 2005.

18. On December 21, 2005, the Officer sent a Notice of Civil Infraction to Mr. [Martin] Morgan and Mrs. [Sharon] Morgan and WRO Development via certified mail and posted a copy of it on the premises. The Civil Infraction notice stated that the Appellants had violated KZC 115.70, 115.115, and 115.150, and described the violations as:

Allowing the accumulation and maintaining of a variety of debris, junk, appliances, building material and vehicles on all three lots that contribute to a general overall appearance of a junk yard. Also storing an oversize RV as well as placing a temporary canopy type structure in the required yard. A recent collection of woody debris from the removal of several trees on the various lots.

19. The Civil Infraction states that the violation had not been corrected by the date required in the Notice and Order, and that a monetary penalty of \$100 per day was assessed for each day that the violation continued beyond the date established for correction. However, the Civil Infraction also certifies the "Violation Dates" as "December 21, 2005, and continuing until compliance".

20. The Morgan's attorney filed an appeal of the Notice of Civil Infraction on their behalf on December 27, 2005.

21. An open area in the front yard at 8249 122nd Ave. NE approximately 70 feet wide is used by the Morgans for parking vehicles, and has direct vehicle access from 122nd Ave. NE. The surface of the area appears to have been graveled at one time, but a substantial amount of vegetation has grown up, and the gravel is not visible in parts of the area. (Exhibits B, F and P)

22. The street on which the properties are located, 122nd Ave. NE, appears to have been chip sealed or possibly paved with asphalt. In any event, it is not surfaced with gravel alone.

23. The Appellants acknowledged at hearing that their RV exceeds the size allowed in a residential zone. They stated that the City has not allowed them to apply for an exception to the size limit through the process established in the Code, but acknowledged that it is unlikely that they can meet the requirements for the exception.

24. Photographs in the record show an accumulation of discarded furnishings, old appliances, scrap wood, and trash on the properties. Two neighboring property owners testified that there is "junk" throughout the properties.

Applicable Law

25. Ordinance 3865 states in section 3 that, "[n]o person may remove more than two significant trees from any lot in any one year period regardless of the size of the lot, provided that this restriction does not apply to hazard trees or nuisance trees." Section 5 of the Ordinance provides that the first violation carries a penalty of \$200 per tree, and that the Ordinance is to be enforced through KZC sections 170.20 through .42.

26. Ordinance 3865 was to remain in effect for six months from its November, 2002 adoption date, but was renewed six times, the last time by Ordinance 4020 adopted on November 15, 2005.

27. Ordinance 4010 adopted the present Chapter 95 KZC, which took effect January 1, 2006, and includes at KZC 95.15 a prohibition on removal of significant trees similar to the prohibition contained in Ordinance 3865.

28. Prior to the adoption of Ordinance 4010, "significant trees" was defined as "[a]ny evergreen tree of eight inches in diameter or greater (25 inches in circumference (around) or greater) ... measured one foot above the root crown." KZC 5.10.860 (12/04 ed.).

29. The Code does not limit the number of vehicles that may be parked or stored on a lot in a residential zone.

30. “Parking Area” is defined in KZC 5.10.632 as “[a]ny area designed and/or used for parking vehicles.”

31. Chapter 105 KZC contains the City’s requirements for parking areas and related improvements. KZC 105.100.1 addresses surface materials for parking areas and states that the “applicant shall surface the parking area and driveway with a material comparable or superior to the right-of-way providing direct vehicle access to the parking area.”

32. KZC 115.115 establishes what “structures, improvements, and activities may be in or take place in required yards as established for each use in each zone... .” For detached dwelling units, KZC 115.115.5.a(1) provides that “[v]ehicles may be parked in the required front, rear, and north property line yards if parked on a driveway and/or parking area.” Vehicles must be operable and licensed. And a parking area “shall not exceed 20 feet in width in any required front yard, and shall not be closer than five feet to any side property line... .”

33. KAC 115.150.1 states that “it is a violation of this code to park or store any vehicle on any lot in a residential zone if that vehicle is both more than nine feet in height and 22 feet in length, including bumpers and any other elements that are required by [law].” This section also provides a process and criteria for seeking approval to park a vehicle of any size on a residential lot.

34. “Junk” is defined as “[o]ld scrap copper; brass; rope; rags; batteries; paper; trash; rubber debris; wastes; machinery; scrap wood; junked, dismantled or wrecked automobiles, or parts thereof; iron; steel; and other old or scrap ferrous or nonferrous material.” KZC 5.10.447.

35. “Junk Yard” is defined as “[a] property or place of business which is maintained, operated, or used for storing, keeping, buying, selling, or salvaging junk.” KZC 5.10.448.

36. KZC 115.70 provides that it is “a violation of this code to accumulate junk or for a property owner or the person in control of property to allow junk to accumulate on the subject property. In addition a junk yard is not permitted in the City.”

Conclusions

1. The Hearing Examiner has jurisdiction over these appeals pursuant to KZC 170.40. KZC 170.40.5.d(2) provides that the City has the burden of proving by a preponderance of the evidence that a violation has occurred.

2. There is no clear evidence in the record on how many trees were cut on the property at 8249 122nd Ave. NE. The Examiner has reviewed the pictures in Exhibit B, and the aerial photo that is attached to Exhibit A, and finds no evidence that clearly shows that three significant trees were cut within the property lines at 8249. (Also, there was no

evidence offered to prove that the trees met the definition of “significant trees” in effect at the time the trees were cut, although it appeared from Exhibit B that they did.) The Examiner cannot find that the City has proven by a preponderance of the evidence that the violation cited in the Notice of Civil Infraction issued December 28, 2005 (ENF 05-253) occurred.

3. The area at the front of 8249 122nd Ave. NE constitutes a parking area as that term is defined by the Code. The size of this parking area violates the Code’s limit on the maximum width for parking areas, and the surface of the parking area violates the Code’s requirement that it be comparable or superior to the surface of the right-of-way providing direct vehicle access to it. The parking area also appears to be located closer than five feet from the side property line in violation of the Code.

4. Other than the vehicles parked on the driveways, the vehicles parked on the subject properties violate the Code’s requirement that vehicles parked in required yards be parked on a driveway or a parking area that conforms with the Code.

5. On this record, the Examiner cannot determine whether the vehicles stored on the properties are operable and/or have current licenses as required by the Code.

6. The RV stored on the properties exceeds the size allowed by the Code in a residential zone and therefore, violates the Code. The fact that the Appellants cannot meet the requirements for an exception to this requirement, and thus, the City will not process their application for the exception, does not excuse the present violation.

7. The record demonstrates that junk was stored on the subject properties in violation of the Code’s prohibition on accumulating junk or allowing junk to accumulate on the properties. The property at 8249 122nd Ave. NE also meets the Code’s definition of junkyard, which is a prohibited use within the City.

8. The City has met its burden of proving by a preponderance of the evidence that the violations cited in the Notice of Civil Infraction issued on December 21, 2005, (ENF 05-259, -260 and -261) occurred as determined in Conclusions 1 through 7 above.

9. Because the Notice of Civil Infraction for the use violation lists December 21, 2005 as the “Violation Date” in the certified statistical information at the top of the Notice, the Examiner will treat that date as the start of the period for assessing monetary penalties for the violations.

Decision and Order

The Notice of Civil Infraction issued December 28, 2005, to Sharon Morgan (ENF 05-253) for violation of the Interim Tree Ordinance is reversed, and the monetary penalty imposed therein is vacated.

The Notice of Civil Infraction issued December 21, 2005 to Mr. Morgan, Mrs. Morgan and WRO Development LLC (ENF 05-259, -260 and -261) is affirmed as to Mr. Martin Morgan and Mrs. Sharon Morgan, but vacated as to WRO Development LLC.

The monetary penalty of \$100.00 per day imposed by the Notice of Civil Infraction for ENF 05-259, -260 and -261 is affirmed for the five days that the violations continued until the Morgans filed their appeal. The penalty of \$100.00 per day shall continue to accrue for each day that any of the violations determined in Conclusions 1 through 7 above continue after the date the Appellants are served with a copy of this decision and order, until complete compliance is achieved and verified by the City.

Entered this 10th day of May, 2006

A handwritten signature in blue ink that reads "Sue A. Tanner". The signature is written in a cursive, flowing style.

Sue A. Tanner
Hearing Examiner

Concerning Further Review

KZC 170.40.8 states: "The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in 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 Hearing Examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW."