



CITY OF EDMONDS

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DEVELOPMENT SERVICES DEPARTMENT • PLANNING DIVISION

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6
7 BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

8 RE: Chris Schuetz and Edmond Tree
9 Services

10 Appeal

11 APL20150001 and APL20150002
12

)
) APPEAL OF NOTICE OF VIOLATION AND
) MONETARY FINE

13 Summary

14 Chris Schuetz and Edmonds Tree Service appeal a Notice of Violation (“NOV”) and Monetary Fine
15 issued as a result of the unauthorized cutting of ten trees in critical areas. The NOV and \$23,100 fine
16 imposed by the Notice of Violation is sustained as to both appellants.

17 Exhibits

18 The nine exhibits identified at page 6 of the August 3, 2012 were admitted into the record during
19 the hearing. The following exhibits were also admitted during the hearing:

20 Exhibit 10: Brief and Declaration of Edmonds Tree Service

21 Exhibit 11: Brief and Declaration of Chris Schuetz

22 Exhibit 12: Letter from Jen Machuga to Mr. Schlect dated June 10, 2014

23 Findings of Fact

24 Procedural:

- 25 1. Appellant. The Appellants are Chris Schuetz and Edmonds Tree Service.
- 26 2. Hearing. The Examiner held a hearing on the appeals at 3:00 pm on March 12, 2015, in the

1 City of Edmonds City Council Chambers.

2 **Substantive:**

3 3. Description of Appeal. Chris Schuetz and Edmonds Tree Service appeal a Notice of
4 Violation and Monetary Fine issued as a result of the unauthorized cutting of ten trees in critical
5 areas at 8001 Talbot Road. The City of Edmonds issued a Notice of Violation and Monetary Fine
6 addressed to Ms. Schuetz and Edmonds Tree Service on February 2, 2015 with a civil monetary
7 penalty of \$23,100 and a requirement to implement the Tree Restoration Plan. Ms. Schuetz filed
8 an appeal of the Notice of Violation and Monetary Fine on February 6, 2015 (Attachment 2).
Edmonds Tree Service, Inc., through attorney Matt Cruz, filed an appeal of the Notice of Violation
and Monetary Fine on February 9, 2015 (Attachment 3).

9 4. Parties. Appellant Chris Schuetz resides at 8124 Talbot Road on the east side of Talbot
10 Road. Edmonds Tree Service is a business located at 7427 – 210st Pl SW, Lynnwood, WA 98036.

11 5. Tree Cutting. It is uncontested that Ms. Schuetz hired Edmonds Tree Service to cut and/or
12 prune trees at 8001 Talbot Road and that Edmonds Tree Service cut down, damaged and/or pruned
13 ten trees at 8001 Talbot Road on or about March 15¹, 2014. Ms. Schuetz does not own the
14 property located at 8001 Talbot Road, but it is uncontested that she asserts that she had permission
15 from the property owner to cut the trees and this assertion is uncontested. Ex. A to the staff report,
16 Ex. 1, identifies the amount of damage done to each of the ten trees, based upon a peer reviewed
17 arborist report prepared by an arborist commissioned by Ms. Schuetz. The damage depicted in Ex.
A is also uncontested and taken as a verity. Ex. A neglects to mention that Tree No. 4 has died as a
result of the tree cutting from Edmonds Tree Service, as noted in the peer review arborist report,
Ex. 7, and testified by Mr. Lien. Ex. A also shows the diameter of each tree, which is also
uncontested and is taken as a verity.

18 6. Critical Areas. It is uncontested that the ten trees were cut in critical areas or their buffers.
19 According to the City's critical area maps and verified by staff during a site visit, the property at
20 8001 Talbot Road is bisected by a stream with slopes steeper than 40% on both sides of the stream.
21 The stream and the slopes are considered critical areas pursuant to Chapters 23.40, 23.80 and 23.90
of the Edmonds Community Development Code. The stream running through 8001 Talbot Road is
a perennial stream which has buffers of 50 – 100 feet depending on whether fish are present.

22 7. Hazardous Trees. The trees subject to this appeal did not need to be removed or altered to
23 avoid a hazard. Ms. Schuetz testified she had the trees cut to improve upon her view. The two
24 arborist reports do not identify that any of the trees were hazards and no party has asserted the trees
are hazardous. The peer review arborist report, Ex. 7, noted that although no formal assessment of

25 ¹ Ms. Schuetz testified the tree cutting was done on 3/15/14. The timeline derived from the declaration of Mr.
26 Schlect suggests the date was 3/22/14. It is clear from the record the tree cutting was done on a Saturday and which
Saturday is immaterial.

1 tree hazards had been conducted, the hazard posed by the removed and altered before the actions
2 taken by Edmonds Tree Service was low to moderate risk.

3 8. Corrective Actions. The corrective actions required by the NOV are not contested in either
4 appeal filed by Edmonds Tree Service or Ms. Schuetz and are therefore beyond the scope of this
5 appeal.

6 9. Misrepresentation. Edmonds Tree Service asserts that Ms. Shuetz advised Mr. Schlect that
7 she had acquired a permit from the City of Edmonds to cut the trees subject to this appeal. Mr.
8 Schlect states that Ms. Schuetz made this representation the Thursday before the Saturday on
9 which the tree cutting/alteration was performed. Ms. Schuetz denies making any such statement.
10 There is no evidence that corroborates Ms. Schlect's or Ms. Schuetz's version of events and no
11 way to determine whether Ms. Schuetz ever made the misrepresentation as asserted by Mr. Schlect.

12 **Conclusions of Law**

13 **Procedural:**

14 1. Authority of Hearing Examiner. ECDC 20.110.040(C) and (D) require the Hearings
15 Examiner to conduct a hearing and issue a final decision, appealable to superior court, on appeals of
16 NOVs.

17 2. Burden of Proof. Chapter 20.110 ECDC does not identify the burden of proof that
18 applies to appeals of NOVs. The burden of proof that typically applies to a code enforcement action
19 is the civil "preponderance of evidence" standard, where courts determine if "more likely than not"
20 an asserted fact is true, *see, e.g., In re Crace*, 174 Wn.2d 835, 840 (2012). However, as
21 acknowledged in ECDC 20.110.040(D), land use code enforcement actions are governed by Chapter
22 36.70C RCW. RCW 36.70C.130(1)(c) does not expressly adopt the "preponderance of evidence"
23 standard for judicial review of land use decisions, but rather requires a challenging party to establish
24 that "*the land use decision is not supported by evidence that is substantial when viewed in light of
25 the whole record before the court*". The factual determinations made in this decision are based both
26 upon the preponderance of evidence standard and the substantial evidence standard.

3 3. Trees Cut in Violation of ECDC 23.40.220. It is uncontested that trees were removed
4 in violation of City code. Removal of trees within critical areas and their buffers is only authorized
5 by ECDC 23.40.220 for hazardous trees. As determined in the findings of fact, the trees in question
6 were located in critical area buffers and they were not hazardous trees.

7 4. Misrepresentation Not Proven and Not Material. In his appeal Mr. Schlect asserts
8 that the NOV should be dismissed against him because he relied upon statements by Ms. Schuetz
9 that she had a permit from the City of Edmonds to do the tree cutting/alteration. The request for
10 dismissal is denied.

1 As an affirmative defense, Mr. Schlect would have the burden of proof on the misrepresentation
2 issue and that burden was not met since Mr. Schlect had no evidence to support his assertion other
3 than his word against that of Ms. Schuetz. There was no reason from the record to doubt the
credibility of Mr. Schlect or Ms. Schuetz.

4 Even if Mr. Schlect had proven that Ms. Schuetz assured him she had a permit, that would still not
5 warrant dismissal of the NOV. As a contractor who has engaged in tree services in Edmonds on a
6 number of occasions (and who calls itself "Edmonds" tree service), Mr. Schlect should be familiar
7 with the City's tree cutting regulations, especially since he has been confronted by City planning
8 staff for illegally cutting on steep slopes in the past, see Ex. 9, 9/10/06 email. Mr. Schlect should
9 have known that cutting trees on steep slopes is usually not allowed in Edmonds unless necessary to
remove hazardous trees. Given that none of the trees were hazardous, a person with Mr. Schlect's
tree cutting experience should have been suspicious of any statement made that a permit was
acquired. In any event, Mr. Schlect was at the least aware that a permit was required and he should
have verified with the City that a permit had been issued, even if he only had one day to do it.

10 5. Property Owner Responsible for Actions of Contractor. Ms. Schuetz asserts that she should
11 not be held responsible for the unauthorized tree cutting because she relied upon the expertise of
12 Edmonds Tree Service to know what regulations applied and also Edmonds Tree Service did more
13 work than she requested. It is concluded that Ms. Schuetz is responsible for the actions of her
contractor regardless of the expertise of that contractor.

14 The Edmonds City Code is silent as to the culpability of property owners for the actions of their
15 contractors. However, the property owners were held responsible for the actions of their contractors
16 in the other two tree removal appeals held in the last few years, Berlinbach (APL20110002 and
17 APL20110003) and Megenity (APL20110005). In all land use and building code violations,
18 property owners are usually held responsible for the actions of their contractors. It would be very
difficult, if not impossible, to pursue code compliance actions if that were not the case and principles
of equity dictate that owners should be responsible for the actions of those they hire.

19 In her appeal statement Ms. Schuetz also asserts that Edmond Tree Services conducted more tree
20 cutting than she requested. Ms. Schuetz did not provide any specific testimony during the hearing as
21 to what exceeded the work she had requested. The work performed is at least in general
22 conformance with the proposal form attached to the Schlect declaration, Ex. 10. The most significant
23 departure from the proposal was the pruning and damage to the Yew tree, which eventually killed it
24 and lead to one of the two \$9,000 fines in the NOV. Mr. Schlect testified that Ms. Schuetz did
25 request additional work while the work crews were cutting the trees. Whether or not Ms. Schuetz
26 requested this work and whether or not this additional work involved the Yew tree is immaterial, as
any departures from what was specifically requested by Ms. Schuetz were not significant enough to
justify any reduction in fines for Ms. Schuetz. None of the departures were significant enough to be
considered something beyond the normal course of requested services. Similarly, any unintended
damage caused to the trees by Edmonds Tree Service during the performance of their services was

1 not so beyond the normal course of tree cutting services that they should not be considered
2 attributable to Ms. Schuetz.

3 6. No Cause for Reducing Fines. The fines as outlined in Ex. A to the staff report were properly
4 assessed. The fines were based upon the size of the tree and the amount of damage. Since all trees
5 were over three inches in diameter and all trees were located in critical areas, the maximum fine
6 could have been \$90,000, but was reduced by staff to \$23,000. Staff did note that one factor they
7 considered in assessing the fine was that the trees were not located on Ms. Shuetz's property. Since
8 it is uncontested that Ms. Schuetz had permission to cut the trees at 8001 Talbot Road, this factor
9 should not be considered significant. However, even in the absence of this factor the fines are still
10 justified. The City Council over the years has increased the amount of the fines evidencing a strong
policy preference for high fines to ensure that adequate incentive is in place to prevent the
unauthorized cutting of trees. The maximum fines in this case were only imposed for the two trees
on the site that were relatively large and valuable (as opposed to alders) and that were completely
destroyed. Fines for the other trees were only ranged from 0-500, depending upon the amount of
damage done.

11 7. Appeal Fees Valid. Mr. Schlect's counsel argued that he and Ms. Schuetz should not have
12 had to pay two appeal fees since the appeals and NOV were consolidated. Nonetheless, two separate
13 appeals from two separate parties were filed. The appeal fees were correctly imposed.

14 DECISION

15 The Notice of Violation, Ex. 1, att. 1, is sustained. The \$23,100 fine shall be due by April 3,
16 2015 and the Tree Restoration Plan prepared by Cooke Scientific (Attachment 1 to Ex. 1) shall
be implemented by June 1, 2015.

17 Dated this 13th day of March, 2015.

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20 Phil A. Olbrechts

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City of Edmonds Hearing Examiner
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Appeal Right and Valuation Notices

This decision is final and only subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short (21 days from issuance of the decision) and the courts strictly apply the procedural requirements for filing an appeal.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.