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Regulatory Review Committee (RRC)
Minutes

Meeting Date: January 28, 2021
Minutes finalized: March 3, 2021

TO: Jim Chan, Division Director
Mark Rowe, Deputy Division Director
Devon Shannon, Assistant Chief Civil Deputy Prosecuting Attorney
Doug Dobkins, Single Family Residential Product Line Manager
Ty Peterson, Commercial Product Line Manager
Sheryl Lux, Code Enforcement Product Line Manager
Chris Ricketts, Building Official and Fire Marshal
Scott Smith, Development Engineer

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Principal Subarea Planner and RRC Co-Chair

Attendees: Sheryl Lux, Ty Peterson, Devon Shannon, Scott Smith, Lauri Dunning, Kevin LeClair, and Christine Jensen.

1. Concerning King County Code (K.C.C.)[1] 16.82.051 and determining when hazard tree removal is allowed without a clearing and grading permit.

Indexes

Subjects: hazard tree, clearing
Code: 16.82.051, 21A.06.1331

Background

Per K.C.C. 16.82.050, a clearing and grading permit is required for any "activity altering a site, including clearing and grading activities and forest practices" unless exempted by K.C.C. 16.82.051.

[1] https://www.kingcounty.gov/council/legislation/kc_code.aspx

16.82.050 Clearing and grading permit required - exceptions.
"A. An activity physically altering a site, including clearing or grading activities and forest practices, shall be consistent with and meet the standards in this chapter unless preempted under chapter 76.09 RCW.
B. Unless specifically excepted under K.C.C. 16.82.051, a person shall not do any clearing or grading without first having obtained a clearing and grading permit issued by the department or having all clearing and grading reviewed and approved by the department as part of another development proposal. A separate permit shall be required for each site unless the activity is approved to occur on multiple sites under a programmatic permit issued in accordance with K.C.C. 16.82.053.
C. The permits or approvals issued under this chapter shall be required regardless of permits or approvals issued by the county or any other governmental agency and do not preclude the requirement to obtain all other permits or approvals or to comply with the operating standards in sections K.C.C. 16.82.095, 16.82.100, 16.82.105 and 16.82.130. Exceptions from permits under this chapter do not preclude the requirement to obtain other permits or approvals or to comply with the operating standards in K.C.C. 16.82.095, 16.82.100, 16.82.105 and 16.82.130."
(Ord. 15053 §2, 2004: Ord. 14259 § 3, 2001: Ord. 12878 § 3, 1997: Ord. 12822 § 2, 1997: Ord. 12020 § 51, 1995: Ord. 12016 § 2, 1995: Ord. 12015 § 2, 1995: Ord. 11896 § 2, 1995: Ord. 11886 § 2, 1995: Ord. 11618 § 4, 1994: 11536 § 1, 1994: 11393 § 1, 1994: Ord. 11016 § 14, 1993: Ord. 10152 § 1, 1991: Ord. 9614 § 100, 1990: Ord. 7990 § 20, 1987: Ord. 3108 § 4, 1977: Ord. 1488 § 6, 1973)

K.C.C. 16.82.051 allows for hazard tree removal without a clearing and grading permit if certain conditions are met.

K.C.C. 16.82.051 Clearing and grading permit exceptions. (excerpt)
"…
B. The following activities are excepted from the requirement of obtaining a clearing or grading permit before undertaking forest practices or clearing or grading activities, as long as those activities conducted in critical areas are in compliance with the standards in this chapter and in K.C.C. chapter 21A.24. In cases where an activity may be included in more than one activity category, the most-specific description of the activity shall govern whether a permit is required. For activities involving more than one critical area, compliance with the conditions applicable to each critical area is required. Clearing and grading permits are required when a cell in this table is empty and for activities not listed on the table. Activities not requiring a clearing and grading permit may require other permits, including, but not limited to, a floodplain development permit.

"NP" in a cell means no clearing or grading permit required if conditions are met. A number in a cell means the Numbered condition in subsection C. applies. "Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network	Out of Critical Area Land Buffer	Coal Mine Hazard	Erosion Hazard	Flood Hazard	Channel Migration	Landslide Hazard and Buffer	Seismic Hazard	Volcanic Hazard	Steep Slope Hazard and Buffer	Critical Aquifer Recharge Area	Wetland and Buffer	Aquatic Area and Buffer	Wildlife Area and Buffer
ACTIVITY													
Grading and Clearing													
Hazard tree removal	NP 25	NP 25	NP 25	NP 25			NP 25	NP 25		NP 25			

…

C. The following conditions apply:

…

25. Except on properties that are:

a. subject to clearing limits included in property-specific development standards and special district overlays under K.C.C. chapter 21A.38; or

b. subject to urban growth area significant tree retention standards under K.C.C. 16.82.156.

…"

(Ord. 18791 § 132, 2018: Ord. 17539 § 6, 2013: Ord. 17420 § 67, 2012: Ord. 17191 § 7, 2011: Ord. 16267 § 3, 2008: Ord. 15053 § 3, 2004)

Staff has requested clarification regarding what criteria should be used to determine whether removal of a hazard tree is allowed without a clearing and grading permit, including in code enforcement cases where the tree(s) may already been removed.

Discussion

First, the committee evaluated if there are applicable definitions in the code. K.C.C. Title 16 does not include a definition for "hazard tree removal". However, K.C.C. 21A.06.1331 defines "hazard tree" as follows.

21A.06.1331 Tree, hazard.

"Tree, hazard: any tree with a structural defect, combination of defects or disease resulting in structural defect that, under the normal range of environmental conditions at the site, will result in the loss of a major structural component of that tree in a manner that will:

A. Damage a residential structure or accessory structure, place of employment or public assembly or approved parking for a residential structure or accessory structure or place of employment or public assembly;

B. Damage an approved road or utility facility; or

C. Prevent emergency access in the case of medical hardship."

(Ord. 15051 § 107, 2004)

K.C.C. 16.82.051.A states that “the definitions in K.C.C. chapter 21A.06 apply to the activities described in this section.” Given this, the committee confirmed that removal of a hazard tree without a clearing and grading permit under K.C.C. 16.82.051 must meet the “hazard tree” thresholds in K.C.C. 21A.06.1331.

If a code enforcement case is opened regarding removal of a hazard tree without a clearing and grading permit, the Division may ask a property owner to demonstrate how the tree meets the requirements of K.C.C. 21A.06.1331. However, the committee acknowledged that the code does not currently outline how such a demonstration should be documented. Given this, compliance with K.C.C. 21A.06.1331 may be difficult to determine after a tree has been removed. A code change requiring documentation of a hazard tree prior to removal, such as via an arborist report and/or photographic evidence, may be beneficial.

The committee also discussed other code requirements for hazard tree removal without a clearing and grading permit. It was confirmed that the exception only applies to certain lands as prescribed in the table in K.C.C. 16.82.051.B. Such activity would only be allowed without a permit in coal mine hazard areas, erosion hazard areas, flood hazard areas, seismic hazard areas, volcanic hazard areas, critical aquifer recharge areas, and lands outside of critical areas and their buffers. However, this allowance only applies if conducted in compliance with the critical area standards in K.C.C. Chapter 21A.24.

Additionally, condition 25 of K.C.C. 16.82.051.C further limits the permit exemption. This condition requires that any hazard tree removal occurring without a clearing and grading permit must:

- not exceed the clearing limits of any property specific (“p-suffix) development standards and/or special district overlays (SDO) on the parcel;[2] and
- meet urban growth area significant tree retention standards in K.C.C. 16.82.156.

The committee also confirmed that hazard tree removal is a separate activity from general clearing[3] allowed without a permit under K.C.C. 16.82.051. This code section states that “in cases where an activity may be included in more than one activity category, the most-specific description of the activity shall govern whether a permit is required.” K.C.C. 16.82.051 allows cumulative general clearing of up to 7,000 sq. ft. on certain lands subject to conditions, collection of firewood and removal of vegetation for fire safety.

[2] See K.C.C. Chapter 21A.38

[3] Per K.C.C. 16.82.020.D, "clearing" is defined as “the cutting, killing, grubbing or removing of vegetation or other organic material by physical, mechanical, chemical or any other similar means.”

K.C.C. 16.82.051 Clearing and grading permit exceptions. (excerpt)

"…

B.

"NP" in a cell means no clearing or grading permit required if conditions are met. A number in a cell means the Numbered condition in subsection C. applies. "Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network	Out of Critical Area Land Buffer	Coal Mine Hazard	Erosion Hazard	Flood Hazard	Channel Migration	Landslide Hazard and Buffer	Seismic Hazard	Volcanic Hazard	Steep Slope Hazard and Buffer	Critical Aquifer Recharge Area	Wetland and Buffer	Aquatic Area and Buffer	Wildlife Area and Buffer
ACTIVITY													
Grading and Clearing													
Clearing	NP 3 NP 24	NP 3	NP 3	NP 3			NP 3	NP 3		NP 3	NP 4 NP 23	NP 4 NP 23	

…

C. The following conditions apply:

…

3. Cumulative clearing of less than seven thousand square feet including, but not limited to, collection of firewood and removal of vegetation for fire safety. This exception shall not apply to development proposals:

a. regulated as a Class IV forest practice under chapter 76.09 RCW;

b. in a critical drainage areas established by administrative rules;

c. subject to clearing limits included in property-specific development standards and special district overlays under K.C.C. chapter 21A.38; or

d. subject to urban growth area significant tree retention standards under K.C.C. 16.82.156 and 21A.38.230.

4. Cutting firewood for personal use in accordance with a forest management plan or rural stewardship plan approved under K.C.C. Title 21A. For the purpose of this condition, personal use shall not include the sale or other commercial use of the firewood.

…

23. Limited to removal of vegetation for forest fire prevention purposes in accordance with best management practices approved by the King County fire marshal.

24. Limited to the removal of downed trees.

…"

(Ord. 18791 § 132, 2018: Ord. 17539 § 6, 2013: Ord. 17420 § 67, 2012: Ord. 17191 § 7, 2011: Ord. 16267 § 3, 2008: Ord. 15053 § 3, 2004)

However, because removal of a hazard tree is specifically addressed elsewhere in K.C.C. 16.82.051, it is regulated separately from and is not subject to the permit exemption for general clearing.

Lastly, the committee highlighted that even if a clearing and grading permit for hazard tree removal is not required, other permits (such as floodplain development permits) may be required per K.C.C. 16.82.050.C and 16.82.051.B.

Conclusion

Guidance for determining whether a hazard tree is allowed to be removed without a clearing and grading permit is as follows.

1. The tree must meet the definition of a "hazard tree" in K.C.C. 21A.06.1331.
2. The tree must be located only on applicable critical area lands in K.C.C. 16.82.051 and if removal is in conformance with K.C.C. Chapter 21A.24, or the tree must be located on lands outside of critical areas and their buffers.
3. The removal must not exceed the clearing limits of any property specific ("p-suffix) development standards and/or special district overlays (SDO) on the parcel.
4. The removal meets urban growth area significant tree retention standards in K.C.C. 16.82.156.
5. The removal is not subject to regulations for general clearing in K.C.C. 16.82.051.
6. The removal may be subject to other permit requirements.

The Division may wish to pursue a code change requiring documentation of a hazard tree prior to removal, such as via an arborist report and/or photographic evidence.

2. Request for Code Interpretation concerning a boundary line adjustment of two nonconforming lots that do not meet the minimum lot size in the given zone into one conforming lot and one nonconforming lot.

Indexes

Subjects: boundary line adjustment, minimum lot area
Code: 19A.28.020 and 21A.12.030

Background

This was the subject of Permitting Division Director's interpretation CINT21-0001.[4] The discussion and conclusion are included in that decision document and will not be repeated here.

[4] https://www.kingcounty.gov/depts/local-services/permits/planning-regulations/code-interpretations.aspx

3. Concerning the Residential Density Incentive (RDI) Program in K.C.C. Chapter 21A.34 and how bonus units are calculated for affordable housing developments.

Indexes

Subjects: residential density incentive (RDI), affordable housing, maximum density
Code: 21A.34.030 and 21A.34.040

Background

This issue relates to an inquiry from an affordable housing developer investigating the potential residential density of a site located in urban unincorporated King County. The 3.21-acre site is zoned R-24. The developer is seeking to provide 100 percent of the dwelling units (units) at levels of affordability prescribed by the RDI Program in K.C.C. Chapter 21A.34. Utilizing RDI, the developer is seeking clarity on how many total units would be allowed.

K.C.C. 21A.34.030 sets the maximum densities allowed under the RDI Program.

> **21A.34.030 Maximum densities permitted through residential density incentive review.**
> "A. Except as otherwise provided in subsection B. of this section, the maximum density permitted through residential density incentive ("RDI") review shall be one-hundred fifty percent of the base density of the underlying zone of the development site.
> B. The maximum density permitted through RDI review shall be two hundred percent of the base density of the underlying zone of the development site for the following RDI proposals:
> 1. For proposals where one hundred percent of the units are affordable units; or
> 2. For cottage housing proposals."
> (Ord. 15245 § 9, 2005: Ord. 10870 § 562, 1993).

A 3.21-acre site in the R-24 zone would have a base density of 77 units. Under K.C.C. 21A.34.030, the maximum density would be 154 units for a proposal where 100 percent of the units are affordable units.

- Base density calculation: 3.21 acres X 24 units/acre = 77 units
- Maximum density calculation: 3.21 acres X 24 units/acre X 200% = 154 units

However, the specific density incentives in K.C.C. 21A.34.040.F.1. appears to limit the number of low-income units depending on the population served. For example, K.C.C. 21A.34.040.F.1.b. outlines the following incentive for low-income senior housing.

BENEFIT	DENSITY INCENTIVE
b. Benefit units consisting of rental housing designed and permanently priced to serve low-income senior citizens (that is no greater than 30 percent of gross income for 1- or 2-person households, 1 member of which is 62 years of age or older, with incomes at or below 50 percent of King County median income, adjusted for household size). A covenant on the site that specifies the income level being served, rent levels and requirements for reporting to King County shall be recorded at final approval.	1.5 bonus units per benefit unit, up to a maximum of 60 low-income units per five acres of site area; projects on sites of less than five acres shall be limited to 60 low-income units.

This subsection appears to limit the total number low-income units of this type to 60 units. It is also unclear whether that limitation is on the benefit units, the bonus units, or a total of both. Regardless, the total number of allowed units under this provision would be less than maximum density allowed in K.C.C. 21A.34.030, raising questions of a possible conflict in provisions. Given this, clarity is needed how to calculate the total number of benefit and bonus units that would be allowed for this proposal.

Discussion

The committee noted that the RDI provisions are rarely used by the development community and, therefore, there is little precedence to rely on for guidance. RDI was discussed by the RRC two times in 1997, but those discussions were not germane to this issue.

The committee discussed whether the intent of RDI is being met if the code did not allow for the higher maximum in K.C.C. 21A.34.030 density to be achieved. It was noted that other provisions support achieving the maximum density through additional bonus units earned based on the amount of public benefit provided (K.C.C. 21A.34.040.A) and that bonus units "may be earned through any combination of the listed public benefits" (K.C.C. 21A.34.040.B). This means that the 200 percent maximum density allowance could be achieved in a case where a combination of benefits are used. This also means that there may be cases where an RDI project would *not* achieve development at 200 percent of base density based on the type of public benefit provided and the allowed number of bonus units. The actual allowed increased density depends on the specifics of any given RDI proposal.

The committee also determined that the 60-unit limitation is on the number of low-income benefit units that a density bonus could then be derived from. If RDI is used, no additional affordable housing units would be allowed on the site unless as allowed via the density incentive bonus units or other types of RDI affordable housing benefit units.

In this case, for a site that is less than five acres in size, K.C.C. 21A.34.040.F.1.b only allows the siting of up to 60 low-income benefit units (less than the 77 units allowed under the base zone if not utilizing RDI). However, each of those 60 units would yield RDI 1.5 incentive units, for a total of 90 bonus units. Therefore, the maximum number units could be up to 150 dwelling units. This is less than 200 percent of base density. However, if other RDI public benefits are combined with this low-income senior housing benefit and if all of the benefit and bonus units are affordable, an additional four bonus units could be realized, for a total of 154 units (200 percent of base density as allowed in K.C.C. 21A.34.030).

Conclusion

If 100 percent of the benefit and bonus dwelling units developed under the RDI program are affordable, the maximum density can be up to 200 percent of the base density. This is may be achieved by combining various RDI benefits in order to reach the allowed maximum. This maximum density is a ceiling and not a guaranteed right. The actual increased density for any RDI project will need to be determined on a case-by-case basis based on the type and number of public benefits provided and bonus units allowed in K.C.C. 21A.34.040.

The 30-unit and 60-unit limitations in 21A.34.040.F.1.a and b., respectively, are caps on the number of benefit units allowed; no additional affordable housing units would be allowed on the site unless as allowed via the density incentive bonus units or other types of RDI affordable housing benefit units. In either case, the total number of benefit and bonus units may be less than the 200 percent of base density maximum allowance. In such a case, the maximum density may be achieved by combining with other RDI benefits.