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January 18, 2022

Sent via email (sszafran@shorelinewa.gov; plancom@shorelinewa.gov)

Shoreline Planning Commission
c/o Steve Szafran, Planning Commission Liaison
Shoreline City Hall
17500 Midvale Avenue N
Shoreline, WA 98133

RE: Development Code Amendments Related to Trees

Dear Shoreline Planning Commission:

This letter is submitted as a supplement to the December 2, 2021 and January 6, 2022 comment letters submitted on behalf of the Innis Arden Club concerning the tree-related Development Code proposed amendments pending before the City. Copies of the December 2 and January 6 comments are appended to this letter for your convenience.

The Club's January 6, 2022 letter noted "two overarching concerns" with the current amendment proposals and process. With regard to process, the Club has expressed its concern about the curated nature of information provided to the Planning Commission and the public, coupled with an absence of public outreach consistent with the City's public participation obligations. The second overarching concern is that the amendment proposals and the discussion of them are "supported" by policy convictions, but not by expert environmental information/studies. This supplemental comment letter focuses on the first concern.

"Public participation" is not a term describing an obligation placed on potentially interested members of the public to service the Department's processing of proposed amendments. It is a reference to the Department's obligation for broad outreach to potentially interested members of the public. This principle is embodied in the Growth Management Act (GMA) and in the City's GMA Comprehensive Plan. *See* Comprehensive Plan Introduction at 1-3.

The City's Comprehensive Plan specifically calls out the importance, pursuant to the GMA, of dialogue with community members, meetings and workshops; specific solicitation of written comments "from residents, special interest organizations and business interests"; and contacting

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“local interest groups” concerning the status of amendments.¹

Adopted Comprehensive Plan Policies give further authority to the preceding. *See, e.g.*, CP1 (“Encourage and facilitate public participation in appropriate planning processes, and make those processes user-friendly”), CP2 (Consider the interests of the entire community, and the goals and policies of this Plan before making planning decisions. Proponents of change in planning guidelines should demonstrate that the proposed change responds to the interests and changing needs of the entire city, balanced with the interests of the neighborhoods most directly impacted by the project.”), CP6 (“Utilize a variety of approaches, encouraging a broad spectrum of public viewpoints...”), CP7 (“Educate residents about various planning and development processes, how they interrelate, and when community input will be most influential and effective”).

The Department -- not the Planning Commission, which after all is composed of part-time volunteers -- is supposed to take the lead and ensure that the City is living up to its own public participation/outreach standards. That has not occurred here. Instead, the Department has apparently settled for “public participation” in the form of repetitive public comments by a few members of the special interest group that proposed the bulk of the tree-related Development Code amendments in the first place. There has been no outreach, for example, to the Innis Arden Club, where roughly 1,000 Shoreline residents reside on 538 lots, despite its well-documented status as a stakeholder on such issues. The apparent rationale for this abdication of responsibility is that, contrary to the Comprehensive Plan, the burden is on interested groups and citizens to update themselves and to insert themselves into the process -- and not on the Department to solicit comments from and provide updates to local interest groups, no matter what the Comprehensive Plan says. As a result of this approach, should any tree-related Development Code amendments be adopted, they will rest on a deficient public participation foundation and will be vulnerable to challenge on that ground, in addition to any substantive grounds.

The questions raised by Innis Arden Club are particularly important for the tree-related Code amendments under consideration. Unlike some amendments that may only affect a particular discrete geographic area or zone, the Department has acknowledged on the record to the Planning Commission that the proposed amendments would affect over 80% of the City. With such a broad impact, the absence of an equally broad public participation outreach for such amendments is unsupported and strongly militates against adoption of the amendments.

¹ Comprehensive Plan Introduction section b makes clear that the public participation program applies to Development Code amendments:

- b. Interest Groups – Contact local interest groups (i.e. Chamber of Commerce, home builders, environmental, neighborhoods, etc.) and arrange to meet and discuss relevant Comprehensive Plan, **Development Code amendments** and other city project issues. (Emphasis added).

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Sincerely,

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Enclosures

Cc: Margaret King, City Attorney (mking@shorelinewa.gov)

Debbie Tarry, City Manager (dtarry@shorelinewa.gov)

Keith Scully, Mayor (kscully@shorelinewa.gov)



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December 2, 2021

Sent via email (sszafran@shorelinewa.gov; plancom@shorelinewa.gov)

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RE: Development Code Amendments Related to Trees

Dear Shoreline Planning Commission:

This letter offers preliminary comments on behalf of The Innis Arden Club (“IAC”) concerning certain aspects of the proposed Development Code amendments related to trees now pending before you. As you may know, The Innis Arden Club is the homeowners association pursuant to RCW Ch.64.38 for the Innis Arden community and its over 500 residential lots and fifty acres of dedicated Reserve Tracts.

1. **Landmark Trees:** The proposal before you is apparently to reduce and revise the benchmark for a landmark tree from this:

Any healthy tree over 30 inches in diameter at breast height or any tree that is particularly impressive or unusual due to its size, shape, age, historical significant or any other trait that epitomizes the character of the species, or that is an regional erratic.

to this:

Any healthy tree that is or over 24 30 inches in diameter at breast height (dbh) that is worthy of long-term protection due to a unique combination of ~~or any tree that is particularly impressive or unusual due to its size, shape, age, location, aesthetic quality for its species historical significant~~ or any other trait that epitomizes the character of the species, and/or has cultural, historic or ecological importance or

that is a regional erratic. Long term protection and recognition of any landmark tree may be obtained through the Landmark Tree Designation program as detailed in SMC 20.50.350(F).

The proposed change is ill-advised in two respects. One is the reduction of minimum dbh with little actual study of the need for, effect, or impacts of such reduction. The other is in the carryover, albeit in new wording, of the fundamentally fatal vagueness and overbreadth of the current definition. The standards enunciated both in the current Code and in the proposal are blatantly vague and amenable to unpredictable and personalized interpretations, contrary to basic precepts of code drafting and interpretation. See Anderson v. Issaquah, 70 Wn. App. 64, 851 P.2d 744 (1993). There is no predictability in a prolix potpourri of poorly defined factors.

2. **Significant Trees:** The proposal before you appears to be to similarly reduce and revise the benchmark from this:

Any tree eight inches or greater in diameter at breast height if it is a conifer and 12 inches or greater in diameter at breast height if it is a nonconifer excluding those trees that qualify for complete exemptions from Chapter 20.50 SMC, Subchapter 5, Tree Conservation, Land Clearing, and Site Grading Standards, under SMC 20.50.310(A). (Ord. 669 § 1 (Exh. A), 2013).

to this:

Any healthy tree six inches or greater in diameter at breast height (dbh) excluding those trees that qualify for complete exemptions from Chapter 20.50. SMC, Subchapter 5, Tree Conservation, Land Clearing, and Site Grading Standards, under SMC 20.50.310(A).

Again, the significant reduction in minimum dbh with little actual study of the need for or impacts of such reduction is ill-advised. Those proposing such a change have an obvious, openly declared agenda, which is fair enough. But municipal government is supposed to balance a number of interests and policy objectives. This cannot occur without relevant information and analysis. For example, has there been any competent expert study of how many lots in the City of Shoreline would be affected by this proposed change? Has there been any attempt to professionally and competently calculate how many more trees would be affected?

There has been reference with regard to proposed amendments to their similarity to “adjacent” cities’ codes. However, some of the “adjacent” cities are not so “adjacent”, such as Bellingham. Other more “adjacent” jurisdictions that have codes more consistent with Shoreline’s current provisions were apparently overlooked. See, e.g., Kenmore Municipal Code 18.20.2730 (significant tree is nonhazardous tree with 8 inch minimum diameter for evergreens and 12 inches for conifers); Bellevue Municipal Code 20.50.046 (healthy evergreen or deciduous tree, eight inches in diameter or greater); Bothell Municipal Code 12.18.030 (trees over eight inches in diameter

excluding alders and cottonwoods as measured four feet above grade); Everett Municipal Code 19.37.220 (at least eight-inch diameter at breast height); Sammamish Municipal Code 21A.15.1333 (healthy noninvasive species tree: coniferous with a diameter of 8 inches or more dbh or deciduous tree with a diameter of twelve (12) inches or more dbh). If the Planning Commission is asked to consider provisions from other cities, the survey and data presented to it should be inclusive, not curated.

Tree Replacement Discretion: There is apparently a proposal to limit the Director's current discretion with regard to replacement trees. But lots are not identical and the factors that inhere in them vary widely. The replacement requirements are sufficiently onerous to begin. Any proposal that reduces the ability to tailor replacement requirements to particular circumstances should be denied.

Solar Access: One factor that is notably absent from discussion in agenda materials suggests a conflict with current energy policy. That conflict is reflected in the failure to address the solar gain/loss impacts of the proposed amendments. Discussion across the country reflects careful consideration of this factor. In fact, the Washington HOA Act explicitly favors solar panel installation and use and limits an HOA's ability to regulate it because solar access and power is an important part of energy policy and carbon reduction. See RCW 64.38.055. How is it then that the impact of trees on solar is absent from the City's considerations? This oversight and the questions raised above strongly suggest that the changes being considered should not be swept forward based on a SEPA Determination of Nonsignificance, but should be the subject of a full SEPA EIS.

IAC expects to provide additional commentary as the current proposals evolve. Meanwhile, thank you for reviewing these preliminary comments.

Sincerely,

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Cc: IAC



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Dear Shoreline Planning Commission:

This letter on behalf of the Innis Arden Club is submitted as a supplement to December 2, 2021 comments in the above matter submitted on the Club's behalf. A copy of the December 2 comments is appended to this letter for your convenience.

The Club continues to have two overarching concerns with the current amendment proposals and process. One concerns the curated nature of information provided to the Planning Commission, along with an absence of documented expert environmental information/studies.

Another is the appearance that the amendments are for the most part being driven by a dialogue between staff and the amendment proponents (who have a particular point of view) with no outreach by the Department to bring into the discussion other well-recognized stakeholders who regularly deal with the City on tree-related matters. This includes the Innis Arden Club which owns and manages over fifty acres of treed Reserve Tracts and in addition has authority over residential tract development within Innis Arden. The opportunity for written comment to the Commission or for a severely time-limited oral comment is not a substitute for Department conduct of an inclusionary stakeholder process.¹

The reliance on generalized conviction over actual scientific information is apparent in several aspects of the current discussion. There is no reference to or discussion of excessive tree densities as a cause of increased tree mortality. The discussion of replacement tree requirements, and

¹ This is not the only instance in which the Department has failed to take a collaborative and inclusionary approach, as opposed to working with a select stakeholder.

associated replacement tree ratios, does not appear to refer to accepted standards for maximum densities (tree spacing) supported by scientific studies. Requirements for multiple replacements for one tree removed must be based on something more solidly documented than good intentions and a lay sense that if one in a location was good, two or three will be better. Where in the record before the Planning Commission are the science of location, soil types, soil moisture, sunlight exposure, wind exposure, and density due to tree species canopy width and root spread documented and considered? Where is there an acknowledgment of adverse effects due to competition for sunlight, water, and available nutrients? The consequences of planting too many closely together have not been considered with these proposed revisions. At a bare minimum, the protective considerations underlying the City's current Engineering Design Manual (EDM) for rights-of-way, which provides minimum street tree spacing requirements along with other criteria, should be part of the consideration here.

The December 2, 2021 Innis Arden letter noted the absence of consideration of solar access, which has become an important goal in the effort to reduce/avoid climate change. Climate change has also resulted in recognition of another significant concern for treed areas – wildfires -- and not just in “far away” areas of Eastern Washington. The Innis Arden Club is working with various governmental agencies to develop a Community Wildfire Protection Plan due to the lessons learned and the threats demonstrated by catastrophic wildfires in communities west of the Cascades. In this new paradigm, the Innis Arden Club's fifty acres of treed Reserve Tracts and many more acres of privately owned forested areas adjacent to or near homes present high fire risk during periods of extreme low humidity in late summer and early fall.

State and local agencies are suggesting education in wildfire risk reduction measures to protect homes as explained in the national Firewise USA program (www.firewise.org). This program outlines the creation of protection zones that extend outward from homes and provides guidelines for vegetation management to remove and reduce fuels, including specific minimum guidelines for tree spacing (density) keyed to terrain slope. Where is the recognition of this issue and an examination of whether the current regulations and proposed amendments conflict with wildfire prevention guidelines?

The Department's exposition for the Commission of particular Code provisions also does not provide a sound basis for decision making. Why shouldn't whether a particular tree receives recognition/protection as “significant” not depend explicitly on such real-world factors as type (some literature even considers bamboo a tree), growth rate, location suitability (*e.g.*, in terms of tree health and human/property harm risk factors) and solar obstruction?

More could be said on these and other points. The takeaway for the Planning Commission should be that addressing piecemeal, whether ultimately adopted or denied, one stakeholder group's proposed amendments is not a sound approach. Nor is comparing what a curated set of cities have adopted an appropriate way to measure what is an appropriate approach – in general or specifically -- for the City of Shoreline. What is needed is a comprehensive review looking at up-to-date

EGLICK & WHITED PLLC

January 6, 2022

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science and current conditions and goals. These are not now reflected in the amendment proposals before you, nor in the current Code.

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