



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

August 2, 2018

VIA E-MAIL TO [aplanner@cityofflp.com](mailto:aplanner@cityofflp.com)

City of Lake Forest Park  
Lake Forest Park City Hall  
17425 Bothell Way NE  
Lake Forest Park, WA 98155

Re: File No. 2018-RUE-0001

I am submitting this comment on behalf of the Lake Forest Park Stewardship Foundation regarding the application for a reasonable use exception, file number 2018-RUE-0001. The applicant bears the burden of showing that adhering to the requirements of LFPMC Ch. 16.14 would deprive any reasonable economic use of the property and showing that the exception requested is made “only to the minimum necessary extent to allow for reasonable economic use of the applicant’s property.” LFPMC 16.14.100(F). The applicant has not met that burden here.

**I. THE APPLICANT HAS NOT SHOWN THAT ANY REASONABLE ECONOMIC USE WILL BE DEPRIVED BY APPLYING THE TREE PRESERVATION REQUIREMENTS**

Nothing within the application for a reasonable use exemption shows that the application of the tree canopy preservation and enhancement requirements will deprive the applicant of any reasonable economic use of the property. Namely, the applicant has not established that it cannot secure alternative sewage access to the site — obviating the need to disturb the Tree No. 6’s interior critical root zone — and the applicant certainly has not shown that it is necessary to remove the tree to maintain reasonable economic use of the property.

“The hearing examiner shall grant a reasonable use exception only if . . . Application of the requirements of this chapter will deny all reasonable economic use of the property; and . . . There is no other reasonable economic use with less impact . . .” LFPMC 16.14.100(C). The requirements for preservation of exceptional trees, such as Tree No. 6, are quite simple: “Tree removal permits shall not be granted for . . . Viable exceptional trees.” LFPMC 16.14.060(B).

First, the applicant argues that it is impossible to build a home on the property without digging a 6.5-foot deep hole approximately 9 feet away from the trunk of Tree No. 6 to locate and connect a sewer line. However, after detailing the three proposed options, the applicant concedes that “[t]he city was hoping for an Option 4, which entailed persuading my east neighbor to grant a joint

use side sewer easement to his sewer stub, thus obviating the need to dig next to the tree for the sewer stub dedicated to my property. After several back and forth emails there was no affirmative agreement.” Yet the applicant does not provide any documentation of his efforts to obtain a side sewer easement and does not provide any further clarification on what it means that there was “no affirmative agreement.” It is unclear whether an agreement could be reached or not. A reasonable economic use exception to the requirements of the tree preservation code can only be granted if *any* reasonable economic use would be denied on the property. If the applicant could obtain a side sewer easement agreement with his neighbor by paying more money, agreeing to certain conditions, or other mechanisms, then the hearing examiner should require the applicant to exhaust those options before obtaining a reasonable use exception. Because the applicant bears the burden of showing that any reasonable economic use will be deprived on the property before a reasonable use exception can be granted, the applicant must make an affirmative showing that a side sewer easement cannot be obtained. A vague statement that there is “no affirmative agreement” does not meet this burden.

Second, the applicant has provided no justification for why the footprint of the house must be built within the critical root zone of Tree No. 6. Each of the three options proposed within the application show a 20-foot rear setback for the proposed residence. However, the application does not discuss the possibility of obtaining a variance under LFPMC 18.70.010 to reduce the rear setback and remove the footprint of the residence off the critical root zone. Elsewhere in the application, the applicant notes that the Lake Forest Park Building Department is willing to reduce setback requirements for a driveway. The applicant should also explore this option for the rear setback to avoid building in the critical root zone before arguing that any reasonable economic use is being deprived of the property.

## **II. THE APPLICANT HAS NOT SHOWN THAT THE REQUESTED EXCEPTIONS ARE THE MINIMUM NECESSARY TO ACHIEVE ECONOMIC USE**

Not only must the applicant show that any reasonable economic use would be deprived on the property by the application of the tree preservation requirements, but the applicant must also show that the requested alteration in the code requirements are “the minimum necessary to allow for reasonable economic use of the property.” LFPMC 16.14.100(C)(4).

The third option proposed by the applicant involves completely removing Tree No. 6, while the other two options entail maintaining the tree on the property. At the outset, the hearing examiner should reject the option that would involve removing Tree No. 6. It is self-evident that removing the tree is not the “minimum necessary” alteration to provide reasonable economic use of the property — especially when the applicant acknowledges that leaving the tree in place is an option.

As noted above, the applicant has not met its burden in showing that digging a 6.5-foot deep hole approximately 9 feet away from the trunk of Tree No. 6 is the minimum necessary alteration to provide reasonable economic use. The applicant has not provided anything beyond vague statements to show that the Building Department’s preferred option — utilizing a sewer easement from neighboring property — is not viable.

Finally, the applicant has not shown why it is necessary to construct the proposed residence's footprint within the critical root zone and, more importantly, how this constitutes the minimum necessary alteration of code requirements to obtain reasonable economic use. The hearing examiner must reject the applicant's proposal if the applicant will not provide justification.

### **III. THE APPLICANT'S CLAIM THAT TREE NO. 6 WILL HAVE NO CHANCE OF SURVIVAL UNDER OPTION 1 IS NOT SUPPORTED**

At the conclusion of the application, the applicant claims that "it seems senseless to make broad concessions for a tree that likely has no chance of survival . . ." However, the applicant has not provided any information that would indicate that Tree No. 6 has no chance of survival under the proposed Option 1.

It is unclear what the applicant is basing the conclusion that Tree No. 6 will not survive under Option 1. The applicant relies upon the Urban Forestry Services report (March 23, 2018), but the report explicitly warns that "[f]urther investigation is recommended for Tree No. 6 to evaluate the rooting habitat of this tree in this location and alter the plan for construction to adequately accommodate this large Douglas fir." Report at 4. The report does not opine that Tree No. 6 will not survive. The applicant also attached a report from Sound Arbor (April 29, 2018) to the application. This report concludes by stating "[i]f the decision is made to retain the tree and perform a crown reduction there is a fair to good chance that it will survive the construction impact." This is a far cry from the applicant's conclusion that the tree "likely has no chance of survival."

The Sound Arbor report also erroneously deems Tree No. 6 "hazardous." Though the report does not explicitly state it, this conclusion appears to be based upon the assumption that digging a sewer tie-in has occurred. What the report does not say is that Tree No. 6, as it exists currently, does not present a hazard. For instance, the Urban Forestry Services report listed the risk of Tree No. 6 as "medium." Report at 7. The Sound Arbor report misleadingly paints Tree No. 6 as an existing hazard, but that is simply not the case.

### **IV. CONCLUSION**

While the applicant presents arguments why removing Tree No. 6 would be more convenient or make more money for him, those considerations are not relevant to the hearing examiner's decision. The only questions for the hearing examiner are whether the application of the requirement of preserving Tree No. 6 would deprive the applicant of any reasonable economic use of the property and whether the applicant is proposing the minimum necessary deviations from the code requirements. The burden is on the applicant to make these showings.

Here, the applicant has not met this burden. The hearing examiner should reject the application for a reasonable use exception and require the applicant to protect Tree No. 6.

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in black ink that reads "Jacob Brooks". The signature is written in a cursive style with a large, looped initial "J".

Jacob Brooks

JB:psc