



April 26, 2017

Planning Commission  
City of Kirkland  
123 Fifth Avenue  
Kirkland Washington 98083

Holmes Point Overlay Ordinance – Commission Study Session, April 27, 2017

Dear Commissioners,

The Finn Hill Neighborhood Alliance (FHNA) is writing to respond to the April 20, 2017, memorandum from Janice Coogan, Deb Powers, and Paul Stewart concerning the Holmes Point Overlay ordinance (HPO), which will be the focus of your study session on April 27.

Late in 2016, FHNA assembled a group of Holmes Point residents to analyze the current HPO and to suggest revisions to City staff. As you know, the HPO is a complex ordinance and raises a host of significant issues concerning environmental protection and private property rights. Kirkland staff members have been generous in committing their time to these matters. We are very grateful for the staff's responsiveness to our concerns and their willingness to consider our suggestions.

The HPO focuses on our neighborhood's core values regarding the future of Finn Hill. At every meeting and workshop about the Finn Hill neighborhood plan over the past year and a half, residents voiced passionate support for preservation of tree canopy and deep anxiety about the adverse impact that new housing developments will have on the forested character of our community. Residents' misgivings are not just aesthetic; they also extend to concerns that development on the slopes of Finn Hill will result in erosion and in pollution of the neighborhood's many creeks and wetlands. This winter has demonstrated that those concerns are justified; numerous landslides have been reported on Finn Hill, including, most notably, the significant slide from the McDonald property adjacent to Big Finn Hill Park, which sent a wall of mud and debris into O.O. Denny Creek.

The HPO was adopted by King County, with the strong support of Holmes Point residents, nearly 20 years ago to mitigate erosion and to "reduce visual impacts of development, maintain community character and protect a high proportion of the undisturbed soils and vegetation, tree cover and wildlife." However, as the staff memo notes, the community believes that the HPO has not been as effective in achieving these objectives as had been originally envisioned. These shortcomings are a result of several factors. In part, the community believes that the HPO has not been interpreted by the City (or by the County in the past) as rigorously as it was written and that violations of the HPO have not been subject to effective enforcement. Furthermore, we believe that homebuilders now have the impetus to

develop formerly undeveloped or underdeveloped lots in the HPO area to the maximum density permitted by applicable zoning; as the staff memo notes, as individual home sites decrease in size, the effectiveness of the HPO is reduced. A neighborhood that developed years ago at a density of 2 to 3 houses per acres is now on the cusp of seeing 6 houses per acre. Putting aside traffic concerns, the prospect of much higher densities raises erosion risks and significant tree canopy loss.

To address these problems, the FHNA ad hoc HPO group suggested many potential ordinance revisions to the Planning Department staff. The core principles advanced by the FHNA group are that the HPO should incorporate enforceable standards for tree canopy preservation on a parcel by parcel basis and that the HPO should curtail zoning density where necessary to ensure that these standards are respected. In particular, FHNA has recommended that development of individual lots be restricted if proposed activity would reduce tree canopy coverage below a minimum threshold (e.g., 30%) or remove more than half of a lot's mature trees; FHNA has also recommended that tree planting be required for developments to the extent needed to achieve or restore 60% canopy coverage in 20 years' time..

The City staff's April 20 memo responds to the FHNA proposals in detail. On several points, FHNA agrees with the staff recommendations in whole or at least in substantial part. But FHNA and City staff do not share a common viewpoint on several critical matters. This letter attempts to summarize our position on key aspects of the staff memo. We have organized the following analysis by first addressing the items where we support staff recommendations; we then focus on areas where our position differs from that of the staff. We have grouped related items where we felt that doing so would simplify analysis and help to keep our commentary as brief as possible.

#### Items on which FHNA substantially agrees with City staff preliminary recommendations

- Zoning (Paragraph D of Staff memo): The staff notes that the HPO is less effective as the size of lots declines: the smaller the lot, the less space remains for the preservation or planting of trees. We agree and feel strongly that RSA8 zoning is entirely inappropriate for the HPO area. Arguably, much of the HPO area that is currently zoned as RSA6 should be downzoned to RSA4 or even lower densities, given the presence of slopes and streams on the western side of Finn Hill. The RSA8 study areas should be downzoned; at least some should be downzoned to RSA4.
- Integrated Development Plans (Paragraphs L, T, and F): FHNA agrees that any significant development activity in the HPO area – a subdivision, short plat or a major expansion of existing impervious surface – should be subject to an IDP process. Currently, development proceeds without a binding determination as to the location of a Protected Natural Area or as to the removal of significant trees. Consequently, areas of natural vegetation and mature trees are damaged (and then removed) as utility easements are installed, grading equipment is maneuvered in and out of construction site, and other improvements are made; the result is that little of the existing fauna survives. With an IDP, a developer must make a binding determination, before site activity begins, as to where improvements will be made and where trees and vegetation cannot be disturbed. This is vital to the protection of the existing tree canopy.

We also support the proposal for tree plans (and PNA siting plans) to be posted so that neighbors are informed and can provide comments before grading commences. Neighbors are familiar with the property that will be developed and how proposals will affect them and the immediate vicinity. Their commentary, at the beginning of the development process, is valuable. In this regard, we take a stronger view favoring public input than the City staff. (See Paragraph T.)

Finally, in regard to plan review, FHNA has recommended that geotech consultants that are required for soils review be hired by the City at the developer's expense, as opposed to being hired directly by the developer. FHNA believes that the objectivity of a geotech consultant may be compromised when the consultant is engaged by a developer. A simple alternative is for the City to select the geotech consultant, with reasonable fees to be paid by the developer. The staff did not endorse this recommendation; we do not understand why the proposal would be objectionable as it provides the City with impartial geotech analyses from trusted experts and should not entail additional expense or delay for the developer.

- PNA Location and Vegetation Standards (Paragraphs M and N): The HPO requires that 25% of each lot must be set aside as a PNA. In Paragraph M, the staff memo observes that in relatively small lots – RSA6 and RSA8 parcels – the resulting PNAs are sited in “small narrow, inadequate locations”. FHNA agrees that small lots constrain the effectiveness of the HPO and FHNA sees value in encouraging an aggregation of PNAs, so that a large lot to be subdivided would have one significant PNA on the property as opposed many small PNAs on the subdivided parcels.

That said, FHNA notes that several community members have objected to the notion of aggregating PNAs, worried that adopting such an approach would simply allow a developer to “preserve” natural vegetation in a portion of a lot that could not be developed in any event. FHNA believes it would be useful to solicit public comment on this concern before final ordinance language is drafted. Certainly, public reservations about reliance on aggregated PNAs would be mollified if it were clear that PNAs would be sited based on an assessment of environmental values rather than being treated as leftover land that is the least important to a property developer's business objectives.

Staff also suggests the cottage housing might be permitted in order to maximize tree preservation, although it questions whether clustered housing construction would be accepted by the Holmes Point community. Again, FHNA recommends that this concept be submitted to public comment. While it is unlikely that Holmes Point area residents would embrace attached units or duplexes generally, they may support such development in circumstances where it can be shown that tree preservation would be enhanced significantly.

The staff memo proposes, in Paragraph N, that language in the current ordinance regarding flexibility as to the location of PNAs be retained. Specifically, the memo says that the ordinance “allows removal of trees if a lot contains poor quality existing vegetation and trees or if it is not feasible to provide a PNA to develop property.” This language may confuse the reader as to what the ordinance actually specifies (although, to be fair, this portion of the ordinance is not

easily summarized). Put simply, the ordinance prohibits the removal of any significant trees on any portion of a property. This is an unqualified prohibition; however, it has been interpreted to allow tree removal to the extent “feasible” (convenient?) to permit development as permitted by allowable density – even though no such language appears in the ordinance. With regard to the siting of PNAs (as distinguished from the cutting of trees anywhere on a property), the HPO says PNAs should be selected with “the least alteration to existing vegetation” but that if it “is not feasible because it would significantly restrict the ability to develop the subject property based on applicable zoning regulations,” a PNA can be located elsewhere on the site if it is replanted to meet specific vegetation criteria.

FHNA does not object to retaining this measure of flexibility in siting a PNA *provided* that other aspects of the ordinance (such as those related to tree removal) are strengthened to better protect the existing tree canopy. These issues are addressed below, in reference to the staff’s comments in Paragraphs C, H, I and J. The vital point is that flexibility in siting PNAs is acceptable – if the HPO is given enough “teeth” and staff is given enough direction to accomplish the principal objective of the ordinance: preserving a property’s tree canopy.

- Impervious Surface Coverage (Paragraphs O and P): As originally enacted by King County, the HPO limits the extent to which lots may be covered with impervious surfaces. However, the ordinance exempts common access roads and driveways from these limitations. The staff recommends that the HPO be amended to include these areas in the impervious surface calculations. We agree. They have a significant impact on the environment and should be taken into account. We also support including vehicular access areas in minimum lot size calculations, a point on which the staff has not yet taken a position. (See Paragraph P.)
- Enforcement (Paragraphs Q and U): In Paragraph Q, the staff memo lists a variety of HPO and other code revisions that can be made to improve enforcement of the HPO’s tree preservation provisions. Certainly, the existing fine \$1000 per impermissible tree removal does not deter some property developers from cutting down trees where doing so will lower construction costs or enhance marketability of a new home: such a minimal fine is, to these developers, merely the cost of doing business. Higher fines are required (in line with those specified in other cities’ tree ordinances). FHNA also supports the proposal that developers, tree companies, and property owners sign affidavits acknowledging familiarity and a commitment to comply with the HPO before development commences; FHNA believes that companies that violate the terms of their affidavits should forfeit their Kirkland business licenses for a significant period of time.

We are disappointed, however, that the staff does not support the use of maintenance bonds and periodic inspections to monitor compliance with tree planting or similar restoration work. (See Paragraph U.) While we recognize that bonds are an administrative burden and that inspections entail costs, we note that many other jurisdictions (e.g., City of Lake Forest Park, King County) employ these measures to ensure that promised remedial work is completed and, very importantly, is maintained. Increased fines and permit fees could fund some of the costs of these measures; in certain cases, a developer can fairly be required to pay for the expense of inspections. If developers are expected to restore tree canopy following construction, the City

needs an effective means of ensuring that replanting trees are maintained and mature as expected. Without those tools, replanting requirements will be ineffective.

Items on which FHNA disagrees with City staff preliminary recommendations

- Tree canopy requirements (Paragraphs C and H): FHNA is concerned that the HPO is not effective at preserving existing trees on properties being developed because the ordinance is treated as subservient to the overall zoning that applies to those properties. As indicated above (see comments regarding “PNA Location”), the HPO is interpreted so that tree removal is allowed as needed and PNAs are sited in order not to compromise the “feasibility” of developing a parcel based on applicable zoning regulations. This interpretation of the HPO is crippling: it treats the ordinance as a band-aid to be applied after trees are cleared to accommodate however many homes are permitted by the current zoning classification. Consequently, the community has no assurance that once development is complete, any meaningful proportion of the trees that once covered a property will remain standing.

The HPO can accomplish its stated purposes – “to reduce visual impacts of development, maintain community character and protect a high proportion of the undisturbed soils and vegetation, tree cover and wildlife” – only if it prescribes measurable standards for tree canopy on a property and only if those standards are enforced.

Consequently, FHNA’s ad hoc HPO group has proposed amending the ordinance to specify that: (a) if a property’s tree canopy would be less than 60% following major development, the owner would be required to implement a tree plan to achieve that canopy coverage level in 20 years’ time; (b) development would not be allowed to reduce existing tree canopy coverage below a lower threshold (perhaps 30%) and (c) no more than 50% of the mature trees on a parcel may be removed for development. These criteria are designed both to ensure the restoration of a robust canopy over the long term and to protect against significant degradation of the existing tree canopy in the short term (which would increase landslide risks as well as degrade neighborhood character).

FHNA’s recommended standards might preclude development of a particular property to the highest capacity allowed by existing zoning. However, it would not all preclude reasonable economic use of the property: development at less than maximum zoning density would still be permitted. And these standards would go a long way to protecting tree cover. In short, the HPO would function in the same fashion as many other land use regulations – for example, wetlands regulations – that restrict development on properties, notwithstanding what general zoning density classifications would allow. The formulation proposed by FHNA is based on concepts embodied in Lake Forest’s new tree ordinance and canopy criteria recommended by American Forests, a 150-year old non-profit organization dedicated to forest preservation and restoration.

In response, the staff memo states in Paragraph C that it supports a goal of 50% tree canopy coverage for Finn Hill. Unfortunately, this “goal,” which is applied at the neighborhood level, is merely aspirational. The City has no means of achieving this goal without tree regulations that

enforce specific levels of protection. Given applicable zoning and incessant pressures for development, it is a certainty that the staff's goal will not be achieved.

Furthermore, the 50% standard is too low. We note that this standard is taken from a recommendation for suburban residential tree canopy coverage that was published by American Forests in 1998. That standard was recommended at the time for Puget Sound suburbs in general. It was not specific to neighborhoods like Finn Hill that are zoned for single family homes, are wooded, and have ravines and numerous creeks. Most significantly, American Forests recently revised its recommendations for suburban tree canopy coverage, stating the different canopy targets should apply to communities based on geographic and climatic considerations. (See American Forests' "Loose Leaf" blog post, *Why we no longer recommend a 40% tree canopy goal*, January 2017: <http://www.americanforests.org/blog/no-longer-recommend-40-percent-urban-tree-canopy-goal/>.) A high percentage target might not make sense in a desert environment but it is well suited to the Pacific Northwest. Consequently, we consider a 60% standard to be reasonable for Finn Hill residential areas. This threshold matches the canopy goal that Pittsburgh has established for itself and conforms to what American Forests says can be sustained in favorable residential conditions. (See also US Forest Service and Davey Tree Institute, *The Sustainable Forest: A Step-By-Step Approach*: [http://www.itreetools.org/resources/content/Sustainable\\_Urban\\_Forest\\_Guide\\_14Nov2016.pdf](http://www.itreetools.org/resources/content/Sustainable_Urban_Forest_Guide_14Nov2016.pdf).)

Similarly, we believe that it is reasonable to prohibit development that would reduce canopy coverage below a specified minimum threshold on a parcel (e.g., 30%). It is important to establish a minimum threshold; without it, parcels could be cleared, altering the character of the neighborhood and increasing risks of erosion and surface water runoff. A 30% canopy standard would mean merely that on a RSA6 lot (7260 square feet), canopy coverage would need to be approximately 2200 square feet – the equivalent of a single tree with a 45 foot diameter crown or two trees with 23 foot diameter crowns. We have coupled the minimum threshold with a supplemental requirement that a percentage of mature trees (we have suggested 50%) be retained for the same purpose of protecting against erosion.

In Paragraph H, City staff recommends that Kirkland continue to utilize tree credit standards in lieu of tree canopy percentages, at least until the use of tree credits on a citywide basis is revisited. Staff also notes that it would be difficult to measure canopy coverage on a parcel by parcel basis. FHNA's ad hoc HPO group members prefer the canopy percentage metric because it directly measures what FHNA believes is the fundamental purpose of the HPO – preserving tree canopy. Tree credits are more abstract and it appears that credits may measure attributes other than tree canopy coverage; the staff memo suggests, for example, that conifers are given 50% more credits than deciduous trees. With respect to staff's concerns regarding parcel-level analysis, FHNA notes that tree credits are also considered at the parcel level and canopy calculations could be performed on a property-specific basis using satellite imagery. American

Forests has provided a free tool called i-tree to assist with such analyses (<http://www.itreetools.org/>).

Nonetheless, some FHNA ad hoc HPO members would not object to an ordinance that continues to rely on tree credits if they better understood how the credit system equates to tree canopy percentages and if the ordinance incorporated tree credit standards that both set ultimate tree coverage goals and precluded development that would reduce coverage below a prescribed minimum level.

- Protection of existing trees outside of PNAs (Paragraphs I and J): The staff memo observes that adoption of the IDP process will enable the City to site PNAs more effectively for tree protection; however, the staff memo says it does not support additional tree protection measures beyond those in the City's general tree ordinance, nor does it support special protections for landmark or heritage trees. FHNA does not understand the staff's opposition to tree protection measures in the HPO that exceed those in Kirkland's general tree ordinance. The HPO currently specifies that significant trees, whether in a PNA or not, may not be removed. While FHNA understands that this language has been interpreted to allow the cutting of significant trees to the extent required to permit development according to allowable zoning, we understand that the staff does require developers to retain all other significant trees, whether inside a PNA or not. This requirement exceeds what the general tree ordinance specifies, so far as we know, and FHNA would oppose any move to relax that requirement. FHNA also believes that exceptional trees, defined to exceed 24" dbh or to be of unique cultural value, should be afforded special status. They should either be protected by a PNA or, if that is not feasible, their removal should either be prohibited unless their preservation would deprive the landowner of any reasonable economic use of the property. The special status accorded to landmark or exceptional trees follows the approach taken in the City of Lake Forest Park ordinance and in numerous other tree ordinances around the country.
- Permissive cutting of trees (Paragraph K): The staff has recommended that homeowners in the HPO be allowed to cut up to 2 trees per year, as permitted by Kirkland's general tree ordinance. While FHNA agrees that homeowners should have greater latitude to trim or even remove trees in the HPO, our support for relaxing current prohibitions on tree cutting is premised on the HPO's establishing overall tree canopy thresholds that would apply to all property owners. For example, tree cutting might be generally allowed on a property to the extent that it did not reduce canopy below 60%. Tree cutting that resulted in canopy coverage between 30% and 60% would be restricted, and tree cutting that reduced canopy below 30% would generally be forbidden. The staff's proposal, however, would eviscerate the HPO's overall protection of significant trees. It would allow a homeowner to freely remove trees outside of PNAs and critical areas. FHNA is strongly opposed to this recommendation.
- Exemption from PNA compliance for existing homeowners (Paragraph S): Several HPO residents have complained that the HPO currently allows developers to cut trees as needed to make home construction "feasible" while existing homeowners are forced to remove established

plantings and install PNA vegetation simply because they wish to remodel their houses or replace an aging structure with a new home. To accommodate these concerns, FHNA's ad hoc group recommended that homeowners be exempted from compliance with PNA obligations unless they proposed a major development, which FHNA would define as a short plat, a subdivision, or a significant expansion of impervious surface on their properties. Staff proposes instead that PNA obligations apply if the cost of an alteration exceeds 50% of the replacement cost of the "improvement" (which we interpret to mean the existing structure). Thus a major remodel or the construction of a replacement home would require a homeowner to establish a PNA, which might mean the removal of established ornamental landscaping. FHNA does not believe that this standard is appropriate. Our view is that a PNA obligation should apply when a property owner undertakes development activity that threatens the existing tree canopy; otherwise, the home owner should be entitled to retain his or her landscaping as it currently exists.

- Expansion of HPO area (Paragraphs E and G): The staff memo refers to the possibility that development on steep slopes (e.g., 40% gradient or steeper) might be prohibited and that the coverage of the HPO might be expanded so that it covers not only the area west of Juanita Drive but also other portions of Finn Hill. The staff's preliminary views appear to be that no such development prohibition or HPO expansion should be pursued at this time. FHNA is aware, however, that many residents have advocated for an expansion of the HPO's footprint and it is clear that other areas of Finn Hill present the same landslide and water surface management issues as exist in the Holmes Point area. Obvious examples are the southern slopes of Goat Hill, where slides have previously closed Juanita Drive, the eastern flank of Goat Hill/Finn Hill (up to 132<sup>nd</sup> Avenue), and the residential areas bordering the ravine above the creek running along Simonds Road. It is our recommendation that the City staff conduct a study as to the suitability of applying HPO development standards to these areas.

We hope the foregoing comments are helpful in explaining the need for amendments to strengthen the HPO. We look forward to attending and, as appropriate, participating in your study session tomorrow. And we would be pleased to answer any follow up questions you may have.

Respectfully,

The Board of Directors of the Finn Hill Neighborhood Alliance



By Scott Morris, President

cc: Janice Coogan  
Paul Stewart  
Deb Powers  
Eric Shields