

EXHIBIT “C”



TO: Dan Grove
SITE: 3515 72nd Ave SE Mercer Island
RE: Tree Health Assessment
DATE: October 21, 2023
PROJECT ARBORIST: Scott Selby
ASCA Registered Consulting Arborist #749
ISA Board Certified Master Arborist #PN-1775B
ISA Qualified Tree Risk Assessor
ATTACHMENTS: Map
Photos
References
Glossary
Assumptions and Limiting Conditions
Certification of Performance

INTRODUCTION and SCOPE of WORK

I was contacted by Mr. Grove on October 13 with regard to engaging my services as a consulting arborist. I was asked to visit the subject site and assess the condition of an oak tree on his property that was severely pruned in November 2021 by a contractor hired by the adjacent home owner. I was asked to evaluate the work for compliance with accepted standards of tree care and applicable Mercer Island City Code (MICC) and provide a report of my findings. Mr. Grove took photos of the cutting as it was being conducted and created his own report that evaluated the scope of work in the context of Mercer Island City Code. I reviewed this report as part of my assignment. Mr. Grove submitted his report to the City, but the city failed to respond to his concerns.

LIMITATIONS and ASSUMPTIONS

The window of opportunity for filing an appeal with the city resulted in some limitations to this report. While I read thoroughly the report created by Mr. Grove and referenced his observations and conclusions, I did not have time to verify all references to MICC. That said, the conclusions drawn are based on my own observations, analysis, research, and experience.

OBSERVATIONS

The tree in question is a 45-inch DSH (141-inch circumference) red oak (*Quercus rubra*). A large west stem of the tree was cut in 2021 to approximately a 12-foot stump. While difficult to determine because of excessive adventitious growth along the length of the remaining stump, diameter of the final cut appears to be approximately 18 inches. The volume of the tree removed appears to be approximately 30 percent of the total biomass of the crown. Some decline of the crown was observed during my site visit, but it was difficult to distinguish between seasonal dieback and potential stress of the tree. The skirt (lowest level of branches of the tree) is approximately 18 feet on the east side (area opposite the cutting) and approximately 50 feet where the cutting was conducted.

DISCUSSION

Because the City of Mercer Island places a high value on trees, they have codified regulations that pertain to how they are managed and protected. Included in the reasons for having regulations that control how trees are managed on private property are: preserving canopy cover, minimizing ambiguity regarding what constitutes acceptable practices, and ensuring that enforcement of regulations pertaining to tree pruning and removal is impartial.

MICC defines “exceptional” trees as “A tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource. An exceptional tree is a tree that is rare or exceptional by virtue of its size, species, condition, cultural/historic importance, age, and/or contribution as part of a tree grove.” MICC 19.16.010 Exceptional Tree Table defines a Red Oak with a diameter of 30” or greater as Exceptional. At 141 inches circumference (45 inches DSH), this specimen is nearly the exact same size as the largest red oak listed in *Trees of Seattle* Arthur Lee Jacobson (143 inches).

The official Mercer Island definition of *pruning* (vs. *cutting*) is “The pruning of a tree through crown thinning, crown cleaning, windowing or crown raising but not including crown topping of trees or any other practice or act which is likely to result in the death of or significant damage to the tree.” With the removal of approximately one-third of the crown of the tree, the work clearly was not consistent with this definition.

CONCLUSIONS

The City of Mercer Island is to be commended for establishing such a high standard of tree preservation. High standards ensure that the sylvan characteristics which contribute to the unique nature of the community remain intact. Requiring compliance with – and ensuring enforcement of – regulations is essential in preserving the value trees provide to the community as a whole. I offer the following conclusions:

1. **The Site.** The land on which the tree is growing is considered a critical area. Because of the sensitive nature of critical areas, specific regulations apply to how vegetation is managed in these areas.

2. **The Tree.** This red oak tree is considered Exceptional as defined by MICC. Exceptional trees are afforded specific protection as a result of the unique value they contribute to the community. Regulations contribute to ensuring that the unique value of Exceptional trees is preserved. **At 141 inches circumference (45 inches DSH), this specimen is nearly the exact same size as the largest red oak listed in *Trees of Seattle* by Arthur Lee Jacobson (143 inches).**
3. **Tree Health.** Prior to the cutting that occurred, tree health was identified by an arborist as being “excellent.”
4. **Cutting.** The management activity carried out on November 10, 2021 by a tree care company hired by the adjacent land owner resulted in a topping cut to a huge stem removed nearly the entire section of crown overhanging the adjacent property – constituting a loss of approximately one-third of the entire tree crown.
5. **Topping.** American National Standards Institute publication *A300 Pruning, Section 8.6 Topping* states that “Reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity, shall be considered an unacceptable practice.” Additionally, widely accepted standards and methods for pruning promoted by the International Society of Arboriculture recommend that no more than 15 percent of live material be removed during a single pruning event.
6. **Cutting vs. Pruning.** City code and guidance clearly defines what constitutes acceptable practices with regard to tree management. Illustrations in the Mercer Island Guide to Pruning Basics unambiguously illustrates what constitutes “improper pruning practices.” Specifically, the Guide calls out “imbalances (that) disrupt the architecture of the tree” as one of those practices. The work carried out on the tree unquestionably meets this criterion.
7. **Mercer Island City Code.** Mercer Island code is specific on what constitutes *cutting vs. pruning*. MICC 19.16.010 defines cutting as “The intentional cutting of a tree to the ground (excluding acts of nature), any practice or act which is likely to result in the death of or significant damage to the tree or any other removal of a part of a tree that does not qualify as pruning. By both ISA standards and Mercer Island code, the cutting carried out on this tree was outside acceptable standards and constituted a violation of code.
8. **Compliance.** Regulation without enforcement is useless. A primary reason for having standards is to protect and benefit the community as a whole. Selective enforcement is unfair and unacceptable.

Respectfully submitted,
Scott Selby



 **ASCA** RCA #749
Registered Consulting Arborist®

Map

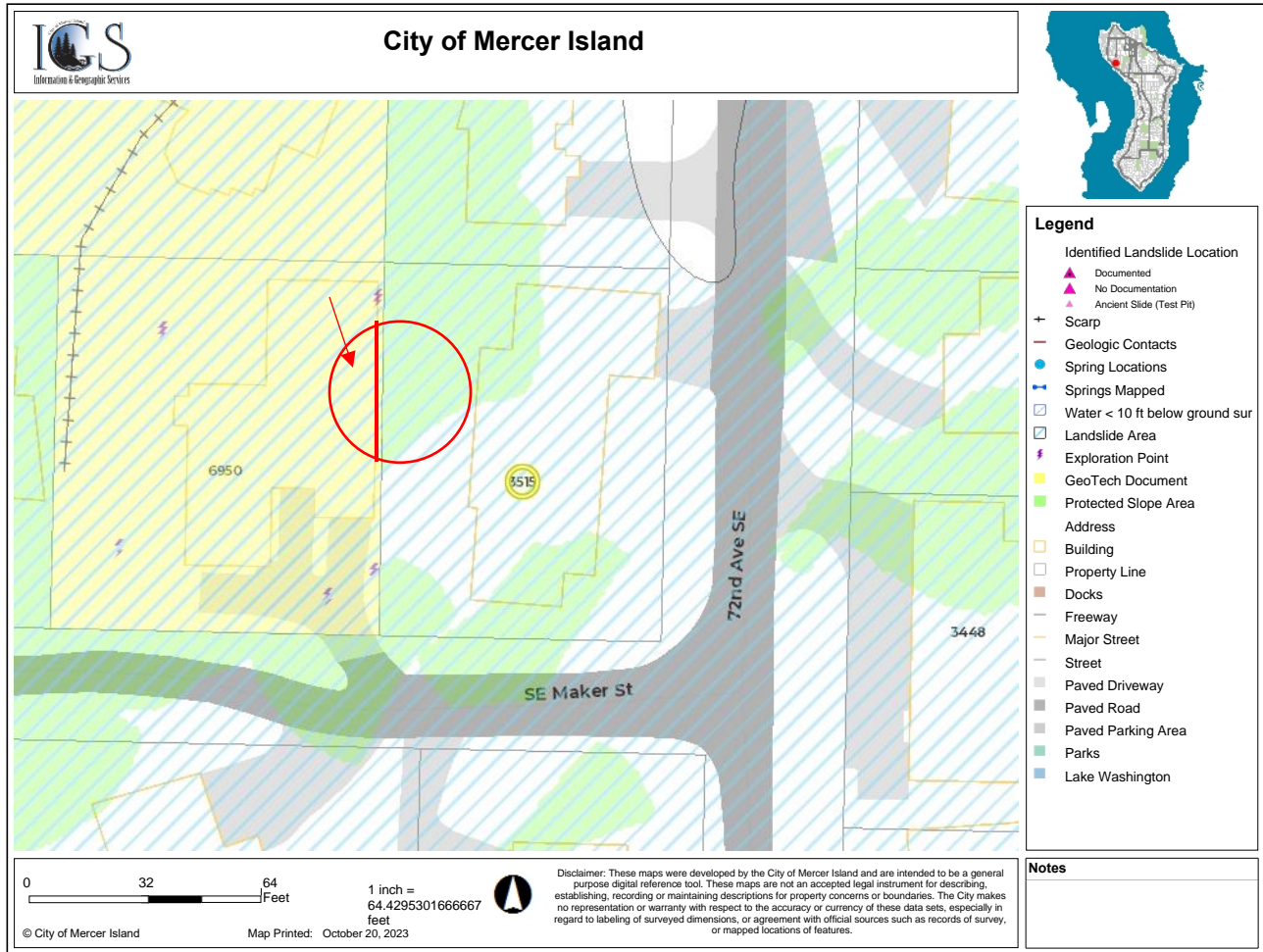


Image 1: Mercer GIS map showing approximate area of tree removed by topping (arrow).

Photos



Photo 1: Red outline shows approximate area occupied by the topped stem. View is looking south. Image taken looking up from base of tree. Arrow points to end of stem that was topped close to the property line and is re-sprouting.



Photo 2: Red outline shows approximate area occupied by the topped stem. View is looking north. Image taken from the street. Red dashed line shows how far back the topped stem was cut. Arrow indicates the approximate distance from the trunk the stem was topped. Green line identifies the main trunk for reference.

References

Accredited Standards Committee A300 (ASC 300). ANSI A300 (Part 1) Tree, Shrub, and Other Woody Plant Management – Standard Practices (Pruning). Londonderry: Tree Care Industry Association, 2017.

Jacobson, Arthur Lee. Trees of Seattle. Seattle: Arthur Lee Jacobson, 2006.

Mercer Island Municipal Code (MICC) 19.16.010. Definitions.

Mercer Island Municipal Code (MICC) 19.10. Trees.

Glossary

DSH	Diameter at Standard Height (measured at 54 inches above grade). Also referred to as Diameter at Breast Height or DBH.
Adventitious Growth	The word adventitious, when used in biology and specifically botany, means anything that grows where it normally would not. So adventitious buds grow out of different places than the apical meristem.

Assumptions and Limiting Conditions

While trees vary in their tolerance to changed conditions, disruption in any form of the environment to which the trees have grown accustomed may result in adverse reaction. Human activity among and near trees is inherently contrary to tree welfare and there are inherent risks associated. The following are limitations to this report:

1. All information presented herein covers only the trees examined at the area of inspection, and reflects the conditions observed of said trees at the time of inspection.
2. Care has been taken to obtain all information from a reliable source. However, the Arborist can neither guarantee nor be responsible for accuracy of information provided by others.
3. Observations were performed visually without probing, dissecting, coring, or excavation, unless noted otherwise, and in no way shall the observer be held responsible for any defects that could have only been discovered by performing said services in specific area(s) where a defect was located.
4. All trees possess the risk of failure. Trees can fail at any time, with or without obvious defects or applied stress. Trees are living biological organisms, and I cannot predict nor guarantee their stability or failure.
5. Sketches or drawings in this report are intended as visual aids only and are not necessarily to scale. They should not be used as engineering or architectural reports or surveys.
6. This report and any values/opinions expressed herein represent my opinion as an Arborist. Inaction on the part of those receiving the report is not the responsibility of the Arborist.
7. Any legal description provided to the consultant/appraiser is assumed to be correct. Any titles and ownerships to any property are assumed to be good and marketable. No responsibility is assumed for matters legal in character. Any and all property is appraised or evaluated as though free and clear and under responsible ownership and competent management.
8. No guarantee or warranty is made, expressed or implied, that defects of the trees inspected may not arise in the future.
9. No assurance can be offered that if any recommendations or precautionary measures suggested are accepted and followed, that the desired results may be attained.
10. No responsibility is assumed for the methods used by any person or company executing any recommendations provided in this report.
11. The information provided herein represents an opinion, and in no way is the reporting of a specified finding, conclusion, or value based on payment for services.
12. This report is proprietary to Scott Selby Consulting LLC and may not be reproduced in whole or in part without written consent. This report has been prepared exclusively for use of the parties to which it has been submitted.
13. Should any part of this report be altered, damaged, corrupted, or lost, the entire evaluation shall be invalid.
14. The consultant/appraiser shall not be required to give testimony or attend court by reason of this report unless subsequent contractual arrangements are made, including payment for such services.
15. Possession of this report does not imply right of publication or use for any other purpose by any other than the person to whom it is addressed, without the prior expressed written consent of the consultant/appraiser.

Certification of Performance

I, Scott Selby, certify that:

- I have personally inspected the trees and the property referred to in this report and have stated my findings accurately. The extent of the evaluation or appraisal is stated in the attached report the Terms of Assignment.
- I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved.
- The analysis, opinions and conclusions stated herein are my own and are based on current scientific procedures and facts.
- My analysis, opinions and conclusions were developed, and the report has been prepared, according to commonly accepted arboricultural practices.
- No one provided significant professional assistance to me, except as indicated in the report.
- My compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party nor upon the results of the assessment, the attainment of stipulated results, or the occurrence of any subsequent events.

I further certify that I am a member of, and certified by, the International Society of Arboriculture. I am also a member of the American Society of Consulting Arborists. I have been involved in the arboricultural field in full-time capacity for a period of over 35 years.



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