

KOPACHUCK RIDGE ESTATES
HOMEOWNER'S' ASSOCIATION
A Washington non-profit Homeowner's Association

KOPACHUCK RIDGE ESTATES DESIGN REVIEW COMMITTEE

Re: Revised interpretation of Covenant 2.13, Landscaping

Background:

Kopachuck Ridge Estates is a three-division and 76-lot development built on the slopes of Kopachuck Ridge in Pierce County. Division 1 and Division 2 face southwest with potential views of Henderson Bay, Carr Inlet, and the Olympic Mountains. Near the crest elevations of KRE some lots have a territorial view eastward including Mt. Rainier. Division 3 faces generally southward and a few lots have territorial views, while others have neighborhood views.

The geologic and topographic setting of KRE is situated on hilly and sloping terrain consisting of mainly unconsolidated glacial deposits. Most of KRE is underlain by the Vashon Till, a glacial deposit of mainly clay, silt, sand, and gravel that has low permeability and porosity. Topsoil is very poorly developed or nonexistent. The Vashon Till deposits directly overlay deeper deposits of glacial silts and clays, thus forming prime conditions for landslides (Washington Geologic Map GM-63, 2006).

The development is governed by a set of covenants and all residents have agreed when they purchased their lot or home to follow the restrictions which appear within. The covenants were written about 35 years ago and cannot be changed. Unfortunately, they were not well written originally and there are numerous conflicts and inconsistencies. Several covenants have been abandoned or not enforced. Much has changed in the world since the mid-1980's and there are places where the old covenants conflict with the Pierce County Code and state guidelines regarding protection of trees and landslide prone slopes. In accordance with paragraph 8.6 of the Declaration of Protective Covenants, Restrictions, Easements, and Agreements for the Plat of Kopachuck Ridge Estates in 1981 (*Protective Covenants*), the Design Review Committee (DRC) has *"the right to determine all questions arising in connection with this Declaration and to construe and interpret the provisions of this Declaration. Its good faith determination, construction, or interpretation of this Declaration shall be final and binding."*

On March 29, 2019, the DRC unanimously issued a ruling that the DRC will adopt the provisions of the Pierce County Code for all further analysis and decisions. Consequently, changes are necessary in previous published guidelines to be consistent with this decision.

WHEREAS:

- The purpose of this guideline is to provide information for Kopachuck Ridge Estates (KRE) property owners and guidance to DRC members in regard to compliance with paragraph 2.13 of the Protective Covenants, governing "Landscaping".

- Covenant 2.13 is only two sentences long. The first sentence has been the cause of multiple lawsuits of uphill neighbors suing downhill neighbors. Legal costs for these suits have easily exceeded 6 figures. This first phrase of the sentence states that planting materials must not exceed 25 feet in height at maturity. When initially passed, these restrictions were meant to influence the choice of landscaping materials when the home was first built. Now some 30 years later this 25 foot height restriction is widely violated yet reducing all trees in the development to this height would be nothing short of a disaster. The second phrase in the first sentence says that no tree other than a fir or hemlock may be allowed to grow on a lot higher than the ridgeline of the building on that lot. This limitation has not been consistently enforced. Only 18 of the 78 lots (23%) have specified ridgeline heights. The remaining 73% homes have no limits. This phrase has led to a demand to “cut to the ridgeline” during tree disputes. Yet this phrase does not appear in the covenants anywhere. No tree has ever been trimmed simply because it exceeded these heights.
- The second sentence in 2.13 gives its real purpose, namely preventing the interruption of an existing view by the growth of certain types of trees. The DRC has previously interpreted this covenant to deal with view interruptions and is not a blanket prohibition or a “bright line standard” prohibiting trees above a certain height. Moreover the DRC has ruled that only an existing view is protected. Clearcutting a forest to create a view is not permitted.
- Kopachuck Ridge Estates is built upon steep, hilly slopes. The elevation range is quite significant and ranges from about 330 feet above sea level downward to its low point at about 115 feet above sea level. It is commonly the case that uphill neighbors are located 50-80 feet higher than their downhill neighbors. It is rare indeed that a downhill neighbor’s roof ridge line would have any effect whatsoever on interrupting a view of their neighbor. Thus tree disputes have been handled by trimming the trees and not by automatically cutting them to the ridgeline of the downhill home.

THEREFORE:

- The previous edition of these guidelines, dated June 17, 2010, is hereby withdrawn and this new set of guidelines replaces the former document.
- In the approval of the original plat for the KRE development in 1981, restrictions were imposed on the removal of trees from the steep hillsides to prevent soil instability. For the past 30 years these restrictions have been widely ignored and the hillsides are indeed slipping downhill. Damage to some homes has been widespread. It is imperative that the DRC take active steps to protect the property values of all residents in KRE by being very judicious in the approval of trimming and removal of trees on the slopes of KRE.
- The word “view” appears in covenant 2.13 yet that term is undefined in the covenants. The DRC ruled in 2010 that the word “view” shall be interpreted as a “view of the waters of Puget Sound and the mountains”. This new set of guidelines does not change that interpretation. Views of other geologic and topographic formations are not protected.

- The DRC's policy of judging the view from the main living area of the home or deck remains in effect as before. This is consistent with the practice of the Pierce County Assessor. Views or lack of views from other parts of the home or the grounds are not germane.
- View interruption is determined to occur when the interruption is judged as "significant". Merely being able to see a tree does not mean that it is interrupting a view. The Pierce County Auditor has published guidelines on how to judge the quality of a view.
- Tree removal and pruning are regulated by the Pierce County Code including specifying certain practices to prune listed Significant Trees (including Pacific Madrone and Big Leaf Maple trees). Due to the risk of landslides, geotechnical evaluations, studies, and permits may be required from Pierce County before any tree trimming may be considered by the DRC. *The cost of performing such studies and obtaining the permits and the eventual tree trimming shall be the responsibility of the party requesting to do the cutting.*
- All trimming and removal of trees must be approved by the DRC. This is unchanged from before.
- The DRC retains the right to protect any tree pursuant to Covenant 3.3.1.

Design Review Committee.



Robert J. Sager, Chair

Approved: April 9, 2019