

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

April 12, 2013

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, April 12, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present: Mr. Brian Patterson
 Mr. Harvey Shulman
 Mr. John Gauger (arrived at 6:32 p.m.)
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey
 Ms. Lynn Wilson
 Mr. Michael Strange

Also Present: Ms. Glenn Mandalas, City Solicitor
 Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

APPROVAL OF MINUTES

Minutes of the January 11, 2013 and March 8, 2013 Planning Commission Regular Meetings were distributed prior to the meeting.

Mr. Markert made a motion, seconded by Mr. David Mellen, to approve the January 11, 2013 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Mr. Mellen made a motion, seconded by Mr. Markert, to approve the March 8, 2013 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – abstain, Gauger – aye, Mellen – aye, Littleton – aye, Markert – aye, Konesey – aye, Wilson – aye, Strange – aye.) Motion carried.

CORRESPONDENCE

There was none.

OLD BUSINESS

There was none.

NEW BUSINESS

Chairman Littleton called for the report from the Building Inspector relative to all conditions being met on Conditionally Approved Partitioning Application No. 0712-03 for a property located at 12 Rodney Street and possible action to finalize the partitioning.

Chief Building Inspector Terri Sullivan read her report. The conditions set forth by the Planning Commission at the Public Hearing for 12 Rodney Street have been completed. The structures have been removed. The new addresses for these properties are 10 & 12 Rodney Street. A permit has been issued to build a new home at 12 Rodney Street. The deeds have been recorded in the Recorder of Deeds Office, Georgetown, DE.

Mrs. Jan Konesey made a motion, seconded by Mr. Markert, to accept the Building Inspector's report and to finalize the partitioning. Motion carried unanimously.

OTHER BUSINESS

Chairman Littleton called for the presentation and discussion by Mr. Bryan Hall, Arborist, entitled "Trees vs.

Construction: How can they best co-exist?" The Planning Commission is beginning a comprehensive study of trees, construction practices and the City's current tree and related ordinances in response to a resolution adopted by the Mayor and Commissioners in December 2012. The purpose of Mr. Hall's presentation is to provide members of the Planning Commission with a common starting point for its study.

Mr. Bryan Hall gave his presentation in three segments. The first segment was about how and why plants grow; the second segment was about construction and root impacts and the third segment was about inventory assessment and canopy goals. In the first segment, Mr. Hall noted that trees need water, light, air, nutrients and space. Light allows a tree to produce food. Air is what a tree uses not only to breathe, but to produce. Nutrients in the soil are nitrogen, phosphorous, potassium and iron. Root tips allow trees to grow up and out in a horizontal fashion. Regardless of what type of tree it is, only approximately the first two inches is actively living in the tree. Trees have hormones which cause it to grow. Leaves produce food for a tree. Branches support and hold leaves and allow for strengthening of a tree. The trunk is the stem which allows a tree to stand upright. The root structure of any tree will grow out two to three times the height of a tree. With regard to impact of construction, eight out of ten roots are found in the upper 0 to 12 inches of soil. Larger roots may go down as far as 20 inches; but the bulk of the roots are shallow, and they are there to absorb air, nutrients in the soil and water, and to provide structural stability. Tree roots are anchorage, storage and collectors. Roots are like water. They look for the path of least resistance such as well aerated soil, moisture, oxygen, pores, good temperature and nutrients. Soil that has not been compacted over time allows for good root structure and development. A tree will use as little energy as possible. The root structure forms a mesh, and the root cap is the driving engine. Rot or decay may occur if a root cap is substantially damaged. Micro-rising is reintroducing fungus into the root system or into the environment where the root system will grow. This creates a shared relationship where the rising helps to extend the growth ability of the root system to look for water and porous soil that has nutrients. Branches support leaves, provide flowers, fruit and growth, transport water and are a place for storage. The three most important cells in the layer of the cell wall are the xylem, phloem and cambium. They allow for movement of food, water and nutrients up and down a tree or moving down a tree to produce excess water. This layer only occurs within the first few inches of a tree. Everything else on the inside of a tree is essentially dead wood. Xylem cells harden over time to support the shape and girth of a tree. Trees do not heal, they seal and always carry the wound. Once fungus is introduced to an injury, decay will move up and down a tree, resulting in decay pockets. Areas impacted the most during construction are root structures. Problems with branches can be solved by pruning. Compartmentalization describes the sealing process or closing off of the injury on a tree. There are four boundaries, and the most difficult one to control is the up and down motion of decay in a tree. Branches are no more than little trees growing off of a big tree. Topping of a tree is not recommended and can result in fines in some jurisdictions because it is a practice that can harm a tree and create long-term hazards not only for the homeowner but can impact the municipality. A u-shaped branch is a good structure, but a v-shaped branch can result in included bark which can lead to decay. A tree is nothing more than a column that moves water and food, and it must breathe. Compacting soil impacts a tree's ability to breathe. Trees are happiest when it is sunny and warm, when there are moist soils and dry soils with sandy conditions and when there is moderate wind.

Mrs. Konesey said that in order to preserve trees when a foundation is being dug out, the dirt cannot be piled up because the depth for the roots would be more than 0 to 12 inches.

Mr. Hall noted that there are cases where stockpiling of dirt for short periods of time is an acceptable practice provided there is a mitigation prescription. The accepted rule of thumb for cutting off a root horizontally and maintaining a tree typically is to the drip line of the tree. The more impact there is from people will shorten the life expectancy of a tree. Each species of tree has a different life expectancy. Weather events, multiple years of drought, insect infestations, etc. can also shorten the life expectancy of a tree.

Mr. Mellen asked if any ordinances in different municipalities take into account the life expectancy of trees.

Mr. Hall noted that there is a diversification protocol in other municipalities and homeowners' covenants. If someone is required to replace a certain amount of trees, only a certain amount of those trees can be specific species of trees because of the challenges they may have. The rest of the trees can be other species that are commonly found in the area.

Chairman Littleton said that if roots are two to three times the size of the crown of a tree and the Planning Commission focuses on a 50 feet x 100 feet lot, then it will need to look at the neighbors' lots as well.

Mr. Hall said that the protection area is recommended to be the drip line of the crown of a tree. This is

the minimum acceptance associated with an industry recommendation. Root structure itself will go out two to three times the height of a tree. The root system may go out three to four lots away.

Mr. Shulman said that roots relate to the height of a tree, but the protection area relates to the drip line of a tree. The area for roots to be protected is related more to the drip line as opposed to the height of a tree. Deciduous trees lose their leaves, and this is a natural process. Mr. Shulman asked what is to be expected with regard to branches and limbs that are subject to the elements and aging, even on healthy trees.

Mr. Hall said that an ordinance or regulation may address a specific tree in a different scenario from a professional perspective inasmuch as looking at a forest groomed tree. Local regulations could say that as an example, the drip line is 10 feet from a tree and roots have the potential to go out two to three times the crown of a tree. The chance of survival could be improved by increasing the area of protection. From the given perspective of a municipality or from mitigating dead wood, branches and limbs are hazardous. The rule of thumb is that dead wood is not negotiable. Preventive and training pruning help to minimize hazards and their impacts. The concept of the right tree for the right place says that there is a large variety of trees which could potentially do well in the City. At first glance when the ordinance was first talked about, hybrid, non-native and native trees were looked at in excess of 150 trees. Rather than having a list of only 10 trees, it was decided that a person would be allowed to work with a professional such as an arborist, landscape architect, etc. The thought was to strategically place trees where they will help with minimize the overall impact of the new structure to the surrounding neighborhood, help with cooling and shade of the home, help with the overall quality of life, etc. Basic parameters were set in the tree ordinance to allow homeowners to replant trees that are acceptable, and then mitigation would be utilized. The tree inventory which was done for the City excluded the forested area but it looked at everywhere else. Two things were looked at: 1. Existing resources. 2. Planting locations.

Mr. Mellen said that since the survey was done there has been a lot of building/rebuilding and the sizes of houses have increased. There is an aggregate of 16 feet for the side yard setbacks. He asked if it is realistic to expect that trees will grow in those setback areas.

Mr. Hall acknowledged that trees can be grown in the setback areas, but there needs to be a level of common sense and practicality when planting trees in these areas. A tree growing in a confined space will adapt to the area. In moving with managing the resource from a community standpoint, there will be a transition from some species that grow tall and tend to be mature to a tree that will be different. The forest will change; and how to mitigate and manage that is no different than avoiding a certain type of species to minimize impacts or hazards, or to avoid the long-term costs of maintaining the species.

Public Comment

1. Mr. Abram Hoffman, 137 Henlopen Avenue, said that either practice or regulation provides for snow fences around trees as protection from any construction.

Mr. Hall said that when the fencing is put up, it is usually put out to the drip line or to a distance away from the trunk of a tree. Some level of protection for the trunk of a tree is achieved. Some municipalities may put up double sets of fencing and provide a fine if the fence is torn down, incorporate a level of mulching in addition to the fencing to help minimize compaction and further protect shallow rooted trees. The trunk gets a degree of protection when the fencing is installed.

2. Mr. John Swift, 100 Sussex Street asked what is considered a safe distance from a loblolly pine tree to a house.

Mr. Hall said that normally what is expected is 1.5 times the height of a tree as the safe zone from a house and a tree. In situations where there are mature or dense forests, it is normally recommended to encourage periodic inspection and evaluation of the tree and avoid compaction. A person cannot predict what tree will fail from root heaving or from saturated soils because it may not be known what has happened in the history of the tree over a given time or it could be from an act of God. Most failures that occur in an urban environment are caused from a root failure situation either from impacts in the past such as damage to the roots or from rot that has occurred in the roots. Soil aeration and deep root injection will help to encourage, promote or enhance root growth.

Mr. Hall said that the second segment of his presentation deals specifically with roots and root problems associated with construction and the human impact of a tree. Trees will provide signs as well as potential symptoms if it has been impacted. Crown dieback will likely occur on the side of a tree that has been impacted. In other cases, trees will put out shoots or suckers where the damage is located. Stunted twig growth can be

symptomatic of nutrient, insect, etc. problems. Leaves that are too small and yellowing is another symptom to other indicators. Masting out is when there is a large crop of cones on nut trees. In this area, that is not a good indicator because of the environmental conditions at the beach. Girdling roots are a long-term indicator of problems which occur from an environmental response. Dead bark on the flare of the roots is another indicator. The lack of a root flare means that it is buried due to possible mulch mounds around a tree. Other circumstances where girdling root occurs are sidewalk impact and root bound potted plants at a nursery. Fungus is opportunistic and is a sign that there is a structural defect. Animals, competing plants and people pressure are problematic. With regard to root competition, a specific challenge for managing trees is managing grass which makes soil denser and compacted. Other causes of root problems are damage by construction equipment, planting at improper depths, mulching and soil tilling. With regard to planting at the wrong depth or mounding over with soil causes a tree to respond with a new set of top roots. Nine out of ten times a girdling root system will occur which will choke off a tree and the tree will die. Most poorly planted trees die because of being planted too deep or the use of synthetic burlap or wire baskets have not been mitigated in a proper fashion. Leaving the burlap or wire basket in place can cause root bulging or root expansion. Bad practices are construction damage from equipment, new sewer or water main where there is not sufficient distance, mulch mound which causes mulch to give off a tremendous amount of heat which can scald the bark and allows for an easy vector for insects and rodents, and turf competition. The preferred distance to place protection fencing is to the drip line of the tree. Protection fencing for a mature tree in a setback area will extend beyond the setback area into the buildable area of the lot. This will be a specific challenge for the Planning Commission to think through as it moves forward. If a desired protection zone is not feasible, something palatable would need to be established to allow for it to work and also prescribing requirements of post-construction mitigation which may mean additional fertilization, mulching or soil aeration to allow for or promote root enhanced growth. Common or established law dictates what happens to a tree which is an accepted practice of law. Line trees in Delaware are a nightmare. Keeping the trunk of a tree on one person's property will solve future disputes. Planting trees on the property line will create problems. Determining if an established tree can be counted towards a lot should be discussed with the City Solicitor. Other jurisdictions have said that the line constitutes a small setback within itself. In addition to the 16 foot aggregate side yard setback, there would a minimum setback on obstructions such as a fence. The fence would have to be a certain distance off of the line. Once a fence is put in place in the established dead zone, it is considered open space of the local jurisdiction. That line then can be utilized as a means of re-establishing buffers for utility access, easement, etc.

Mr. Hall noted that common examples of other causes of root problems are soil compaction, foot and vehicle traffic, construction equipment, etc. People are more detrimental most times than vehicles or construction equipment. Soil can be un-compacted by aeration, coring of the soil, limiting general access and foot traffic, erosion, grade changes, limited soil volume, hardscape conflicts, trees themselves, etc. The prescription after the fact would be to add organics back in the soil which would improve or enhance the fill brought into a construction situation, improving nutrients, helping with potential drainage and potentially introducing micro-organisms, fungi, etc. Air excavation tools such as an air spade are another technique to break up soils and minimize impacts associated with compaction. Things to consider in an urban landscape is the goal for trees to live longer, analyzing and planting the sites, trees themselves and properly planting them, and monitor and provide maintenance.

Mr. Hall said that the third segment of his presentation deals with liability in general, understanding and mitigating hazards, and challenges with risk assessment and risk management. Although the goal is awareness, education, improving response and public safety, it promotes urban health. Some elements of the current tree ordinance promote quantity. This is a good way of doing things if there is a lot of opportunity for planting, but it may not be a good thing because it may promote some of the hazards such shoehorning too many trees onto a lot which may not be able to sustain them. There has been an ongoing focus on risk assessment. Tree risk management lays a framework to manage the resource. A hazardous tree has a structural defect, a target and an environment prone failure. The City has implemented an urban forestry program and management plan in two phases, one addresses priority removals and priority prunes. A re-establishment program has been put in place. The challenge is the understanding of hazardous tree removal which is the top priority. The program with risk management has the same protocol of preserving trees and has a systematic approach and is repetitious. Corrective action will be implemented with preservation measures which can include fencing, mulching, pruning, etc. Those actions will be documented as part of the planning process which comes through when someone is developing a site plan or tree preservation plan for a given lot. It is the scenario where the trees will be outlined, identify which ones are to be removed and then talk about how they will preserve the other trees. The goal of any tree preservation program is not to clean off all the trees on the lot and plant somewhere else, but it is designed to find a balance between them. Challenges for preserving the resource are increasing such as weather, etc. The human factor creates scenarios that make trees more susceptible to storms. A storm survey

that is done in response to a large event such as a hurricane, is also done pre-construction in a home situation. In most cases, trees fail during storm events. Understanding the history and what has currently been done with the program in the City will determine how to place future trees and preserving existing trees. Knowing the areas where the trees have failed will allow for more decisive decisions for placement of trees. If defects are present in a tree and can contribute to its failure, and if defects are detected during an assessment conducted by a professional, then the homeowner is liable. Public safety has to be looked at from the perspective of a street tree management program. The City is responsible for moving people through the open spaces in a safe fashion. The homeowner tries to minimize impact to the property and improve the value of the home. Homes that have a forest setting, street trees or mature trees have on average an increased property value from 15-23%. Poorly maintained landscape can be harmful and have a decreased property value. Insurance adjusters that come out and make comments to homeowners regarding trees are responding to situations where they have been provided training in response to an increased number claims. Homeowners can protect themselves from liability by demonstrating responsible care and by demonstrating that the community is exercising responsible care. The cornerstone of the process is inspections and looking for defects. Regularly scheduling things are key for pre-construction and post-construction. The concept of superior design and how it is managed will allow for sustaining the canopy closure and character for the community and will allow for a large home. Steps will need to be taken to achieve that. Having a good tree planting evaluation process beforehand is a good way. Allowing for and providing for alternative building methods is another way. Construction practices and activity will be discussed at a future date.

Mr. Shulman noted that a typical lot in the City is 50 feet x 100 feet. If the side yard setbacks are considered at eight feet with an aggregate of 16 feet. This would allow 1,600 feet for side yard setbacks on both sides. If a rear yard setback is considered at 10 feet, this would allow 340 feet for the rear yard setback. All the setback areas would total approximately 2,300 square feet. This area would not be buildable. The maximum lot coverage in the Code is 50% for structure which does not include sidewalks and driveways. The setback areas by definition are also half of the lot. To build a 2,500 square foot house, the sloping would need to be done in the setback areas which would result in removing trees. A property could literally be left with no trees left on it. Alternative construction techniques that comply with OSHA are more expensive. Mr. Hall said to look at the building code and refine it, or look at the idea of no disturbance in the setback. As the Planning Commission dives into this discussion and the tree ordinance, it will need to evaluate this issue. Mr. Hall has provided the Planning Commission with all the information for it to think about as it makes decisions.

Mr. Mario Roche, Henlopen Avenue, suggested that when a tree is removed, it would be better to plant an appropriate tree. Construction also involves City construction such as trenching. With regard to the ocean outfall project, he voiced concern of how the roots of trees will be impacted and what the City is doing to preserve the canopy.

Mr. Hall said that typically large scale projects, because of the need for future maintenance and inspection, etc., will use existing right-of-way as much as possible. He could not speak to the specifics of the project, but the project is outlined in the EIS statement submitted to the State.

Chairman Littleton said that one of the specific charges the Planning Commission has is to be sensitive to the rights of property owners vs. community rights and how the balance is set. The Planning Commission will be talking with tree service companies, construction companies, builders, etc.

Mr. Don Santarelli, 67 Henlopen Avenue, asked whether the trenching for the ocean outfall piping will be put down the middle of the street or in one shoulder or the other.

Mrs. Konesey said people have landscaped and planted in the City right-of-way throughout the City. Now when the City should have clear access down its own right-of-way, it does not. It is an invasion of the City right-of-way.

Mr. Tom Zellers, 308 Stockley Street, asked if this subject will be brought up at the next meeting.

Chairman Littleton said that the next meeting will be held on May 10, 2013. The Planning Commission also needs to talk to people and their neighbors who have gotten tree permits and who have been granted or denied appeals. The Planning Commission had not talked about trees and related ordinances tonight.

Mr. John Swift, 100 Sussex Street, said that he has pine trees on his property which have caused a lot of damage to the house. The City Arborist is of the opinion that if a tree is not diseased or causing a problem, then it cannot be removed. He asked what the City will grant a tree removal permit for.

Chairman Littleton noted that the current code and the practice of the City is what applies. The City Commissioners have asked the Planning Commission to assess what has been learned since the Code has been put into place, do the research and come back with recommendations.

Mr. Abram Hoffman, 137 Henlopen Avenue, said that there had been discussion about a potential to require a change in regulations which provides for shoring as opposed to sloping. The OSHA regulations that are then incorporated into building codes which pertain to excavation provides for shoring or sloping as an alternative means providing for the safety of the workforce. Mr. Hoffman will provide this information to the Planning Commission. The current tree ordinance provides for redesign of a building that has not yet been constructed so as to provide for the maximum preservation of trees. The fixed component is trees and the variable component is the design.

Mr. Hall said that the Planning Commission has addressed the idea that it is going to be doing specific case studies where it will be engaging individuals who participated in the process. One of the key aspects is to see how that process can be re-evaluated, refined and improved upon so that concerns that might be presented by an individual participating in the process has been minimized. The process is clearer, and everyone has a better understanding of what their role is. When speaking with the building community and tree service companies, the costs and cost comparisons should be understood. In taking the next step and going to the City Commissioners, the Planning Commission will be coming back with a recommendation that will make possible improvements to the ordinance itself pertaining to trees; but then the Planning Commission will say that in addition, it has found a systemic problem with a construction or open space code, etc. If there is a discussion of improved construction practices, cost will be brought up. This will be something that the Planning Commission will want to think about asking as it moves forward.

Mr. Mellen said that Mr. Hall was going to give the Planning Commission some help in terms of ways to evaluate the tree canopy in terms of private vs. public land, etc. The Planning Commission needs to evaluate whether the goals are achievable on private land and to what degree public land would be needed to achieve them.

Mr. Hall said that the City's goal is a voluntary goal and is relatively flexible. The opportunity had been there to move forward on additional public lands, and grant programs were willing to assist with that; but the discussion of private lands opened up additional questions that had not yet been clarified by the City Commissioners. There was some opinion that, other than doing simple stratified sampling, a complete comprehensive inventor of every tree on everyone's lots might not have been a cost effective means of doing business or was going to open up a variety of questions such as liabilities for homeowners vs. the City and who is responsible for what. Grant funding is still potentially there to do the public work and potentially there to do the stratified sampling. Mr. Hall will forward to the Planning Commission his source of data as to the value of property with mature trees being 15-23% higher.

Chairman Littleton noted that Mr. Hall's presentation tonight will be available on the City website.

No new subdivision applications have been filed to date.

The next scheduled Regular Meeting will be held on May 10, 2013 at 6:30 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 10:13 p.m.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JULY 12, 2013**

(Francis Markert, Secretary)