

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

August 9, 2013

The Special Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 2:34 p.m. by Chairman Preston Littleton on Friday, August 9, 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 (arrived at 2:41 p.m.)
 Mr. Harvey Shulman (arrived at 3:11 p.m.)
 Mr. John Gauger
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey (arrived at 2:38 p.m.)
 Ms. Lynn Wilson

Absent: Mr. Michael Strange

Also Present: Ms. Terri Sullivan, Chief Building Inspector

Also Absent: Mr. Glenn Mandalas, Esq., City Solicitor

A quorum was present.

CORRESPONDENCE

Letter received August 5, 2013 from Mr. James Ellison, Henlopen Avenue, supports the intent of the ordinance when originally conceived and still does. However, the ordinance must be adjusted to be more flexible and more reasonable.

CITY'S TREE ORDINANCE AND GOALS

Chairman Littleton called for discussion with representatives of tree service companies, builders and construction companies doing business in the City concerning their experience with the current tree and related ordinances, regulations or procedures and any recommendations or suggestions that they might offer which would further the City's objective to preserve and augment the urban forest, be it on private land or public lands. The Planning Commission shall also seek input from tree service companies, builders, developers and construction companies doing business within the City of Rehoboth Beach under the existing tree ordinance and other related ordinances and regulations. Invitations were sent to all such companies seeking their participation at this special meeting.

Chairman Littleton had sent letters to 28 companies which do business in the City inviting them to this special meeting. Those companies contacted were tree companies, builders, masonry contractors, architects, landscaping, etc. There were two responses from Mr. Jeff Meredith, President of Sussex Tree Inc. and Mr. Eric Wahl of Element Landscape. The invitation touched on the issues the Planning Commission is dealing with regarding the trees. One issue is increasing the tree canopy citywide, and the other is the tree ordinance. The objective is to maintain and increase tree density and tree canopy on private and public land within the City. The Planning Commission will be trying to do a balance between property owners' rights and the community's desires and rights. The Planning Commission believes that these particular companies have firsthand knowledge of the realities of what is going on in the City and the Code.

Mr. Jeff Meredith, owner and President of Sussex Tree Inc. noted that there is nothing written in the tree ordinance regarding nuisance trees. As long as a nuisance tree is living and there is nothing wrong with that tree, the City Arborist's hands are tied, and he has to deny a tree removal permit. A homeowner should be allowed to remove the nuisance tree and plant another tree species. All his clients would not have a problem with replanting other desired trees that are a native species. Mr. Meredith has seen a lot of topping of trees being done in the City which is not permitted by the restrictions in the tree ordinance. No permit is required to top a tree or to prune a tree. Currently, any tree person can come into the City and get a business license to

prune trees. A certified arborist should be doing the work with regard to pruning. Topping a tree will reduce the life expectancy of a tree. It is alright for a non-certified arborist to take down a tree if he/she is properly trained. With regard to Delmarva Power lines, Asplundh has the responsibility to maintain a clear right-of-way of those lines. Most of those people do not know how to properly prune. They only know how to cut away from power lines. Asplundh does not have to tell a property owner what is being done. Mr. Meredith cannot be within 15 feet of a power line to properly prune a tree. A tree can be pruned off of a neighbor's property as long as no harm is done to the tree. The neighbor is responsible for paying for the work done. His company will not go onto a neighbor's property to prune a tree until there is written permission from the property owner. Currently, houses are being built to the setback lines, and there is not enough room on the property to put in a tree. It is unrealistic to require someone to have three trees on their property when there is no room for a tree. Planting the right tree is important instead of planting a tree just to put a tree in. The property owner needs to know what the root structure will be like in 10 years. There is an issue with planting trees and maintaining those trees in ways that they will achieve the growth expected. Construction damage to trees is a big issue such as when a developer gets too close to the root structure and has mangled it underground, there is no immediate evidence that this damage has been done. When a new house is being built, there is no way of protecting trees on neighbors' properties. There is no way that there is enough room to provide the tree protection fencing to protect all of the root structure of a tree with the size of the lots in the City. It will be hard to maintain and increase the tree canopy or the number of trees in the City. Certain types of density should be thinned to increase the life and health of the other trees. In order to keep trees healthy, the understory trees and plants should be allowed to be removed. As a certified arborist, Mr. Meredith could attest to whether removing trees is beneficial. It would be beneficial for a property owner to get an opinion from a certified arborist. Mr. Meredith acknowledged that the way to proceed would be for either the City Arborist to have the latitude to make the decision to take down a tree or the decision should be supported by the Planning Commission to use a certified arborist. There needs to be discretion to save trees when a house is being built. Trees listed on the tree list are recommended to be planted, but some of those trees on the list are not good trees to be planted. Mr. Meredith has never had a situation where it has not been beneficial to the remaining trees if trees are taken down so the other trees get more sunlight. The type of species of a tree determines how much space a tree needs. The problem with big trees when houses are being built is compaction of the roots. If the tree lives, damage will be seen within the first one to five years. If a new tree is put in after construction is complete, the roots will be healthy. A homeowner who wants to save a tree should contact an arborist. There should be an environmental impact study done when there is construction, not only for the tree on the lot but for the trees on adjacent lots. This should be a requirement of submitting plans for building. With regard to a homeowner presenting a tree assessment at the time a building permit application is filed, the builder will need to do a drawing of the trees that will remain on the property. The house print will not change for the homeowner. Mr. Meredith said that he would not have the time to assess all the trees on a property, and it would not be in the realm of what he should be doing. He acknowledged that a certain size tree could be required to replace what is taken down. The bigger tree to be planted will have root loss because of tree spading. A smaller tree that is planted will catch up over time to a bigger tree that has been tree spaded. There should be an optimum size tree to be planted. Trees that have a three inch caliper are too big to be planted as street trees in the space that is allotted because there is not enough room for the root structure.

Mr. Eric Wahl of Element Landscape has noticed that the tree ordinance is very complicated, complex and confusing. He is pleased with the intent of the ordinance to keep the tree canopy and make the City a tree city. In regard to changing the building footprint, that is problematic with redesigning a house. This could be an added expense that might be considered a hardship. The success rate for establishment of a larger tree being planted is lower than that for a smaller tree. The larger tree would need to be monitored as it is trying to get established. Homeowners would not have the time or know-all to monitor that tree. The three-inch caliper trees are too big to be planted as street trees because the root ball does not have enough room. Another possibility would be to make the tree pits larger between the sidewalk and curb and have tree grades where the interior rings can pop out as the tree grows. Another trend happening in urban areas is floating sidewalks where the unseen tree pit itself is actually longer and takes up almost the entire length of the sidewalk. The roots of the tree are able to grow unobstructed underneath the floating sidewalk. There is a benefit to have evergreen trees planted so that at least year-round there are some trees which always have their leaves. A healthy forest has a diverse group of individual plantings of trees. It is recommended to have different types of street trees. There is always a benefit to having different types of trees in and around the City. With regard to the tree ordinance, under the street tree species recommended to be planted, Mr. Wahl reviewed the various trees and their characteristics for not planting them as street trees. He thought that the street tree species list should be redone. A possibility would be to have a list of recommended trees throughout the City, not just street trees. Under the definitions in the tree ordinance, damage is the severe decline, disfigurement, discoloration, defoliation,

removal or death of any tree which is “intentionally” caused or is the result of recklessness or negligence. It should be considered “damage” if a weaker tree is produced because of storm damage. This tree should be allowed to be removed. The definition for an evergreen tree is wrong. An evergreen tree holds onto its leaves or a majority of its leaves throughout the year. There are three conifer trees that lose their leaves. The definitions in the tree ordinance need to be tweaked. There are too many definitions for the types of trees in the ordinance to be protected. There should be once system for categorizing a tree based on its size and its health rather than a small specimen tree, specimen tree, etc. It should be simplified for the builder, homeowner and the City. A lot line tree should be counted in calculating tree density. The language under general criteria for determination of specimen trees, trees stands and historic trees is complicated and should be simplified. With regard to mitigation, replacing one inch caliper for one inch caliper is overkill. According to the ordinance, if a 24 inch caliper tree which provides canopy is removed, it would be replaced with eight trees with three inch caliper each. There would be eight canopies for the price of one. This would increase the canopy eightfold. Another system, depending on the size of the tree, would be to plant two evergreen trees per caliper or a calculation for the ratio such as two evergreen trees equal one shade tree or three ornamental trees equal one shade tree. This would reduce excessiveness, but canopy would still be created in addition to what is being removed. As a landscape architect and designer, Mr. Wahl puts together a plan with diverse landscaping and shade trees, evergreen trees, understory trees and shrubs. He liked the density requirement where three trees are needed for a 50 foot x 100 foot lot because this creates canopy on the property. According to the density provision, there needs to be a certain amount of deciduous trees vs. evergreen trees. An incentive program by the City should be investigated and implemented to help the homeowners save trees rather than punishing them for taking out trees. If there is an incentive to save trees and to replace as many as possible on a lot, then the negative attitude might change about mitigation. There should be education for the public as well as changes in the policy. An incentive could be monetary or to congratulate or acknowledge a homeowner that they are a part of the City in this fashion. There should be a recommended planting list of all trees for the City with the trees highlighted that are approved for street tree planting rather than just have street trees. Mr. Wahl recommended putting in the Code to defer to the invasive plant species list of Delaware for trees not recommended to be planted in the City. It would be a good idea for whoever updates or modifies the tree list or ordinance for that person to have a professional background in dealing with trees. The overall canopy is part of the community. Mr. Wahl referred to hierarchy streetscape plans from other municipalities. Currently the City is losing tree canopy visually, but homeowners are being required to plant trees on their property or elsewhere. Those trees will eventually grow up and become the new canopy.

Commissioner Patrick Gossett suggestion that the Planning Commission might consider in its recommendation is to establish a fee or some type of equation that will allow Building & Licensing to assess the trees for removal.

Due to the lateness of the meeting, the remaining agenda items were not discussed.

The next scheduled Regular Meeting will be held on August 9, 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 5:00 p.m.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
DECEMBER 13, 2013**

(Francis Markert, Secretary)