

**PARKS AND SHADE TREE COMMISSION  
CITY OF REHOBOTH BEACH**

**November 24, 2014**

The Parks and Shade Tree Commission Meeting was called to order at 2:03 p.m. by Chair Priscilla Smith on Monday, November 24, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Ms. Marcia Maldeis  
Chair Priscilla Smith  
Ms. Jane Wyatt  
Ms. Anne Hubbard  
Mr. Ned Kesmodel

Also present: City Solicitor Glenn Mandalas  
Building Inspector Terri Sullivan  
Walter Onizuk, City Arborist

A quorum was present.

Ms. Maldeis noted that her husband, Mr. Stan Mills, sits on the Board of Commissioners, and she would not be influenced by that in making her decisions.

**CORRESPONDENCE**

Letter received November 10, 2014 from Todd Heller, was in support of the appeal.

**APPROVAL OF MINUTES**

Minutes of the October 27, 2014 Parks and Shade Tree Commission Meeting were distributed prior to the meeting.

Ms. Marcia Maldeis made a motion, seconded by Mr. Ned Kesmodel, to approve the minutes of the October 27, 2014 Parks and Shade Tree Commission as written. Motion carried unanimously.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

The purpose of this meeting was to conduct an administrative appeal hearing pursuant to the Comprehensive Tree Ordinance (Chapter 253 of the Municipal Code of the City of Rehoboth Beach).

Appeal Hearing No. 1014-06 was requested by by Jeff Meredith of Sussex Tree Inc. on behalf of Philip Mudd, owner of the property located at 3 Park Avenue pursuant to Section 253-36 of the Municipal Code of the City of Rehoboth Beach, and pertains to the denial of a request to remove two (2) trees.

City Solicitor Mandalas noted the procedure for the hearing.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copies attached.) On October 2, 2014, an application for tree removal was received by Building & Licensing to remove two trees that are pushing up the patio. The permit was denied. The patio consists of pavers which were install in 2000. The pavers are slightly raised in areas, but not the extent of causing a material safety or health hazard or nuisance. The few pavers that are being disturbed can be reset or adjusted. In conclusion, the City did not find that the pavers were disturbed more than could be remedied easily. Mitigation would be for ten trees to be planted. No application has been submitted to put in a new patio. The application for the patio may allow the Applicant to take down the trees. He would have to mitigate as well.

Mr. Jeff Meredith of Sussex Tree Company noted that the two trees in question are a Southern Magnolia and an American Holly. The problem cannot be easily fixed. The root structure is starting to go. The Applicant would like to redo his patio. If the patio is redone, he will have the same problem in approximately two years. The American Holly is a nuisance tree. The trees are approximately 20 to 25 years old. There is no room in the area for the root structure to survive. The patio will not survive if the root structure would survive.

Currently, there are seven trees on the property. The Applicant would like to replace the trees with other types of trees in another part of the yard.

Mr. Mudd added that the flagstones are pushing up and becoming a hazard by tripping over them. He plans to replace the trees with somewhat mature trees. The two trees are damaging the property and are a health hazard.

There was no public comment.

Chair Smith closed the public portion of the hearing and called for discussion among the members of the Parks and Shade Tree Commission.

Ms. Maldeis made a motion that if the patio is replaced, then the building inspector will allow the trees to be cut down, and then there will be mitigation for the replacement of trees with like kind. This motion was retracted.

Ms. Maldeis made a motion, seconded by Mr. Kesmodel, to deny the appeal.

Mr. Mudd said that his initial intention was to correct the damage that is there now with the flagstones that have risen up and to replace some stones around the fountain. He was not sure that he would need a building permit to do that.

City Solicitor Mandalas noted that in the Code, there is an exemption for routine tree maintenance such as trimming that is not intended to result in the eventual death of the tree, but rather in order to maintain a healthy, neat and orderly appearance or any other activity which is commonly recognized as routine tree maintenance. He suspected that under this provision he can do something with the root structure which is not intended to kill the tree, the Parks & Shade Tree Commission would not have an issue.

(Anne – aye. Jane – aye. Kesmodel – aye. Smith – aye. Maldeis – aye.) Motion carried unanimously. The trees cannot be removed at this time.

## **OTHER BUSINESS**

Discuss possible Code amendment recommendations relating to fees in lieu of mitigation.

Ms. Wyatt suggested that if an owner of a 50 foot x 100 foot property has three trees on the property and there is no room to plant an additional tree, then they should not be allowed to pay \$100.00. That owner should pay for what it costs the City to plant a tree, take care of it, water it, etc.

Mr. Kesmodel said that the Commission should recommend to the Mayor and Commissioners a cap on the mitigation of trees and the fee.

Ms. Hubbard said that people should know the dollar amount per tree when they request cutting down a tree.

Ms. Sullivan noted that in Section 253-33 of the proposed tree ordinance it is called out for mitigation of protected trees. For trees being removed, the quantity of replacement trees shall be (1) if the tree is less than 12 inches caliper, one replacement tree is required, (2) if the tree is 12 inches to 24 inches caliper, two replacement trees will be required, (3) if the tree is 24 inches to 36 inches caliper, three replacement trees will be required and (4) if the tree is 36 inches or more caliper, four replacement trees will be required. The fee in lieu of mitigation would be \$500.00 for each replacement tree. The proposed tree ordinance is a shade tree ordinance as opposed to just a tree ordinance so trees like the ornamentals and smaller trees will not be included in it.

Mr. Kesmodel said that there should be a cap on the mitigation fee, and the cap should grow with the size of the lots. A 10,000 square foot lot would have a different cap than a 5,000 square foot lot. The cap should be different if trees are being taken down because of putting in a pool as opposed to a house. A pool is not necessary.

Ms. Sullivan said that with the proposed ordinance, a person would be able to pay the fee in lieu of mitigation without having to come before the Parks & Shade Tree Commission. The fee would have to be paid before getting a permit.

The consensus of the Commission members was to adopt its own policy to use the mitigation written in Section 253-33 of the proposed tree ordinance. For trees being removed, the quantity of replacement trees shall be (1) if the tree is less than 12 inches caliper, one replacement tree is required, (2) if the tree is 12 inches to 24 inches caliper, two replacement trees will be required, (3) if the tree is 24 inches to 36 inches caliper, three

replacement trees will be required and (4) if the tree is 36 inches or more caliper, four replacement trees will be required. The fee in lieu of mitigation would be \$500.00 for each replacement tree. The cap on the fee should be \$5,000.00 for a 5,000 square foot lot and \$10,000.00 for a 10,000 square foot lot.

The December meeting will be held on December 15, 2014 at 2:00 p.m.

There being no further business Chair Smith adjourned the meeting at 3:10 p.m.

**Respectfully submitted,**

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**(Ann M. Womack, City Secretary)**

**MINUTES APPROVED ON  
AUGUST 24, 2015**

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**(Priscilla Smith, Chair)**