

MINUTES
CITY OF BEAUFORT TREE BOARD
January 31, 2013 3:00 pm
Planning Conference Room, city Hall – 1911 Boundary Street
Beaufort, South Carolina

In accordance with South Carolina Code of laws, 1976, Section 30-480(d), as amended, local media were duly notified of the time, date, place and agenda of this meeting.

Members present

Barb Farris, Chairman
Jim Arnett
Derrick Wells
Michael Brock

Absent members

William Waskiewicz

Staff present

Eliza Hill, Planning Department

MINUTES

Mr. Arnett said that in the December 14, 2012 minutes, the amount on page 4 in reference to the minimum Tree Fund budget should have been \$200,000, not \$100,000 as was recorded.

Mr. Arnett made a motion to approve the minutes of December 14, 2012 as amended and of January 24, 2013 as submitted. Mr. Wells seconded the motion. The motion passed unanimously.

TREE FUND

Chairman Farris reviewed the history of the Tree Fund up to its current status. There was discussion about council's responses to the Tree Board's recommendations. It was agreed that mitigation monitoring would be difficult and costly. Chairman Farris said none of the Tree Board's recommendations are binding. She feels that at some point the Tree Board should ask the City of Beaufort to make it binding. Mr. Arnett said he has been calling people to research their processes and can check to see "what other cities do to keep people in line."

Chairman Farris asked if it was agreed among the Board that there should be a fee reduction with mitigation. Ms. Hill said it's covered in the UDO for commercial properties. Ms. Hill said that Publix has mitigated; a \$50 fee per commercial tree taken down applies. If the trees are planted back, Ms. Hill asked, does the fee go away? Mr. Wells said the county charges an impact fee regardless *and* requires mitigation. Mr. Brock said if they don't mitigate (because they don't have enough room, for example) they pay into the fund per tree. Mr. Arnett said

Publix is trying to put back what they are taking away in order to keep from paying additional fees.

Mr. Brock said the county is planting the median on Highway 278 with their impact fees and also doing other projects. A property requested that their Tree Fund contribution go specifically to the Highway 278 median planting. "Now the pot's dry," Mr. Brock said, but the county is building it up to use in the Highway 278 median.

Mr. Brock said he agrees with the removal of fees with mitigation for commercial properties. Mr. Arnett said in regard to private property, they "need to come up with something that will stick" in regard to mitigation. Mr. Wells said only a small percentage will mitigate and maintain.

Chairman Farris told Ms. Hill that the Tree Board agrees on mitigation for commercial properties but needs to discuss if residential property owners should be required to mitigate. Mr. Wells and Mr. Brock said residential properties should have to mitigate, but it is hard to enforce. Ms. Hill said "they won't do it." Ms. Hill said **Libby Anderson** has said that the removal fees don't go away if someone mitigates, and Ms. Anderson didn't think they should have to pay the full Tree Fund fee if they mitigate. Mr. Wells said residential property owners should have to mitigate if it's a healthy tree that they just want to take out.

Ms. Hill said if a commercial property takes out trees and then mitigates 90%, the leftover caliper inches should be paid for, since they didn't mitigate 100%. Mr. Wells said it's easiest to consider caliper inches than number of trees or another measurement. He suggested there could be loopholes because the surveyors might not accurately convey the numbers, especially on big lots. Ms. Hill said she has to go with the survey that she's given. Mr. Wells said doing an average tree size might be easier than relying on inaccurate surveyors' numbers.

Under this proposal, Ms. Hill said, if full mitigation were done, there would not be any Tree Fund fees coming in for that property owner. Whatever they are not willing or able to mitigate, there would be a fee of a certain amount per caliper inch. Mr. Arnett said "the Tree Fund money will come from those who are unwilling to mitigate."

Chairman Farris said council needs to understand the repercussions of not having money to work with. She asked if the Tree Board agreed with staff; Mr. Arnett said yes, on the commercial side. Ms. Hill asked how many dollars per caliper inch they thought was fair, and Mr. Arnett said \$5. Mr. Brock and Chairman Farris said they feel that's not enough. Chairman Farris asked what the county charges. Mr. Brock said its \$140 per tree. There was a discussion of how this would work in the city in relation to the county formula.

Mr. Brock said a landscaping budget on an average commercial project is \$60,000; Tanger 1 spent \$350,000 on landscaping. Mr. Wells said he doesn't think it's a problem to present the

proposed city plan to council as being parallel to the county's formula. In the city, the impact is greater than in the county. Beaufort is, after all, a Tree City, he said.

Mr. Brock said they are also trying to get a handle on better design, and they should design *around* a 48" tree, and then there's not concern about mitigation. These kind of fees might convince the designer that it's a better idea to design around a tree than to cut it out and pay fees / mitigate. It was agreed that \$150 per tree is an appropriate amount for commercial trees. The Tree Board advises this for commercial properties only, with a formula that includes a tree discount for mitigation. Chairman Farior suggested that the examples used in council should be the budgets for landscaping for big developments like Publix or Tanger to indicate that "a Tree Fund contribution with mitigation is a drop in the bucket."

In regard to the second point, Ms. Hill said Charleston doesn't charge for labor to plant but does for the wholesale cost of the tree. Mr. Arnett said when there's a tree farm, they should be able to offer trees at a cheaper price than \$200. Ms. Hill said they won't be ready until they are 2" caliper in the farm. **Mayor Keyserling** and Ms. Anderson, Ms. Hill said, thought the tree farm would be used only for trees for public property. Charleston, though, uses them on private property, too, so the city might want to consider that as well. Ms. Hill said it will be 3-5 years for some trees. Council thought the trees should be used in right-of-ways and public property. Ms. Hill said she will cite the Charleston version to council.

Mr. Arnett said, in regard to hazard trees in town, they need to give the public incentives to take out a tree that it is agreed will be a problem during a storm; they can take it out and then the property owner be given trees to plant. Or if a homeowner buys a tree wholesale, the city could plant it for them. Chairman Farior said that the property owner should have to agree in writing to take care of the tree for a year. Ms. Hill said the city has argued against this when the property changes hands, if the new owner wants to take a tree out. Ms. Hill said the homeowner could pay the wholesale cost of the tree and the city would plant it.

On the third point - no Tree Fund fees charged for dead trees removed - there was general agreement among the Tree Board members.

Fourth, Mr. Wells said he believes specimen trees should have a higher charge. Ms. Hill said the commercial Tree Fund fee could *only* be charged on specimen trees. If it's a 24" or greater over-story tree or a specific grand tree specimen, there could be an elevated fee for taking it out to help take care of the urban canopy. Ms. Hill said a magnolia must be 24" to be considered "grand." She suggested that it should be less than 24", which is the measurement for any broad leaf over-story: The size should be reduced and the fee upped.

Mr. Wells said he feels it should be species-specific in the UDO. Ms. Hill said maybe the species should be targeted that should be considered at 18" or up. Mr. Wells suggested "slow-growers, for sure" like magnolias, live oaks, cedars, and red and white oaks.

The Tree Board agrees that the fee should not only apply to grand trees, Ms. Hill said. Mr. Arnett suggested that \$250 per tree was a good price for these, and there was general concurrence. Chairman Farior said it might help deter developers from taking out grand trees that could be designed around. This fee would be in addition to the other fees and mitigation formula. Mr. Wells said they might want to change it to a fee per caliper inch for grand trees rather than a flat fee. Mr. Arnett suggested it could be \$50 per caliper inch on grand trees. Mr. Wells agreed. Chairman Farior said this is important to educate about the importance of these trees. Chairman Farior suggested that Ms. Hill provide council with the Charleston formula, a town just 70 miles away.

Ms. Hill asked, if they go with \$50 per caliper inch for grand trees, if it should be a \$175 charge for a 3.5 caliper tree as well; this is in comparison to the county's \$140 fee. There was general Tree Board agreement on this.

REVIEW OF CITY ATTORNEY QUESTIONS

#1 – What is the city's ability to do anything about hazard trees on private property that endanger public property? It was agreed that this is a good question.

#2 – Can a tree be removed by a government entity and the property owner be charged? What method would be used for compensation over time? Mr. Wells asked if that's what they would even consider. Mr. Arnett said if the homeowner doesn't want to take out a definite hazard tree or can't take it down, the city could get someone to come and take it down pro bono.

#3 – Are there any liability issues for the city regarding hazard trees on private property? If tree on private property fails causing harm to public domain and hazard was readily visible to city staff (reasonable man clause), is the city culpable? In regard to liability issues for the city, Mr. Arnett said in terms of priority, this should perhaps be question #2. Ms. Hill said if she sends a letter with a picture, she isn't telling the property owner to do something, but they need to know if the city is liable just from having sent the letter. Mr. Wells said if it's on their property and a professional identifies it as a hazardous tree, then the liability is on the property owner.

#4 – If the city notifies a private property owner, in writing, of a tree on their property that threatens the public domain and the property owner chooses not to remove, is the city liable if the tree fails and causes harm? It was agreed that this question is similar to #3.

#5 – What is the city's responsibility once put on notice regarding a hazard tree on public property that is either owned or managed by the city? In regard to the city's responsibility once a tree's put on public property, Ms. Hill said this is specifically referring to Mercy Cemetery on Boundary Street.

#6 – *In regard to hazard trees in the SCDOT right-of-way and blocking sight lines at street intersections: currently, the DOT is put on notice in writing. If the DOT fails to make corrections in a reasonable amount of time, what are city’s responsibility and/or liability?* It was agreed that this is a good question.

#7 – *Who within city government should receive reports from citizens and/or staff regarding hazard trees?* Ms. Hill said she’s “just staff.” She asked if the Tree Board should request in writing that each time staff gets a tree report that it go to the Public Works director and the city manager. She presently can’t send such a report to **Isaiah Smalls** and copy **Scott Dadson**. Chairman Farris said they can make a recommendation to do that. Mr. Arnett said they could do so after they meet with the city attorney. Ms. Hill said “many things don’t get beyond (her) most times.”

#8 – *Should the city be developing a risk reduction policy? Governmental immunity?* The Tree Board has an article about risk reduction in their packets, Ms. Hill said.

#9 – *What would be the mechanism for imposing fines and/or liens on private property owners who have been notified by the city but do not act to remove the hazard within a specific time frame?* There were no Tree Board questions on this matter.

In regard to possible UDO amendments – pruning responsibility – Ms. Hill said she had added that because it recently came up. She gave an example of a DOT tree that has been trimmed by the city, and no more can be done; the branches overhang on to a neighbor’s private property and he would like to prune it to the property line. The homeowner *should* prune it, Ms. Hill said. Mr. Wells said that it’s not the neighbor’s responsibility, but if it’s in the air space over a neighbor’s house, the neighbors can do what they like or write a letter so that they are covered if something ever happens. Ms. Hill said it needs to be clear that this is the responsibility of the private property owner, and they need to be safe but not hurt the tree.

Chairman Farris said the homeowner’s insurance company can be involved in that, too. Mr. Arnett said he’d like to bring in someone from Kinghorn Insurance to discuss liability issues. He said live oaks can protect the house. These trees will defoliate before the branches break. Others might lie down against the house, rather than “snap off like a pine (would) and slam into the house.”

It was agreed that these questions could go to the city attorney with few changes.

FIELD TRIP TO SECESSION

Chairman Farris said she is in favor of this. Mr. Arnett said he could show examples of trees planted and fertilized well that grew great in the last 16 years. Mr. Wells said he’d be interested, too. A date was agreed upon.

UDO LANGUAGE REVISION REQUEST IN REGARD TO TREE BOARD TERMS

Ms. Hill read the ordinance in regard to the "Tree Board" terms: some are for two years and some are for four. She asked the Tree Board to consider changing the wording to request that the paragraph about Tree Board terms be expunged and add that the term of the five persons appointed "shall be in perpetuity." Mr. Brock said this is an advisory board, and "it doesn't need to be refreshed" the way the ZBOA or some other Board might need to be; it has no power per se and makes no decisions. He understands the terms rotating for Boards that need to be refreshed. As an advisory board, Ms. Hill said, it's not necessary to have terms of office. Chairman Farrow said this Board is very strong now, unlike it was 5-6 years ago.

HOPEY LAUREL

Ms. Hill discussed the letter she would send from the Tree Board saying that the Board's stance is what it was in 2010.

ATTEND CHARLESTON AND SAVANNAH TREE BOARD MEETINGS

Mr. Brock said he will do research on Charleston's Board, but the Savannah Board meetings are monthly, and they have been meeting since the 19th century.

LANGUAGE FOR UDO MITIGATION REQUIREMENT

- Last tree on property
- Removal of grand trees
- Certain percentage of canopy reduction
- Removal of multiple pines (for example)

Chairman Farrow suggested that this be tabled. Ms. Hill discussed the specific case that brought this to the fore, and said that there should be mitigation requirements within specific parameters.

ADJOURNMENT

There being no further business to come before the Board, Mr. Arnett made a motion, second by Mr. Brock to adjourn. The motion passed unanimously. The meeting adjourned at 4:53 pm.