

City of Bay Village  
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE  
February 22, 2021  
6:00 p.m.

Members Present: Councilwoman Sara Byrnes Maier, Chairman  
Councilwoman Lydia DeGeorge  
Councilman Peter J. Winzig. (Appointed to Committee 2-11-2021)

Also Present: Law Director Mark Barbour, President of Council Dwight Clark  
Council Thomas Kelly  
Director of Public Service and Properties Liskovec (Zoom).

Audience by Zoom: Debra Jesionowski, Dios, Peggy Kranyak, Claire Banasiak, Bernadette Power.

The beginning of the meeting was delayed for approximately ten minutes due to technical difficulties.

Agenda this evening is the Tree Ordinance. Ms. Maier noted that changes to the ordinance have been discussed for the past few meetings, and tonight there will be conversations regarding charging homeowners for removal of trees and some of the legalities of the proposal of a tree permit. The goal is to move the legislation out of this committee and up to the Committee of the Whole for the entire Council to discuss.

Chairman Maier reviewed the following sections of the draft of the ordinance. The ordinance includes suggested revisions by the Tree Commission in 2018.

Chapter 547, Tree Ordinance

The purpose of the tree ordinance is to protect the trees.

Ms. Maier called for comments or suggestions by each section as follows:

547.01 - Purpose. Mr. Winzig suggested that in the event the City of Bay Village publishes a tree plan, it be included in this section. Mr. Barbour stated that the two small paragraphs addressing tree selection and tree maintenance may be better in a section regarding resources.

547.02 – Definitions. Mr. Winzig stated that a Boundary Line Tree is not defined, and possibly should be added. The reference of “Right-of-Way” and “Public Streets” should also be defined. A number of ordinances reviewed from across the county actually have exhibits of drawings of where the street ends, the curb, or buffer area, what we call the treelawn, and different sidewalks and shrubbery. Ms. Maier stated that there is accessory information in the ordinance that may not be needed as they are updated from time to time. The new City website will provide information regarding trees and providing that accessory information may be better served through the website.

Ms. DeGeorge asked if a definition needed to be added for clear cutting. Mr. Barbour stated it could be added depending on what the final section looks like that addresses clear cutting, or based on how many times it is used in the ordinance.

Ms. Maier noted that the definition of “Protected Tree” is included as any tree having a diameter of 8 inches DBH or larger or having an aggregate diameter of 20 inches DBH. The feeling of the Tree Commission is this would be fairly standard for protected trees.

547.03 Trees on or Overhanging Public Property and Diseased Trees and Trees on Private Property. Ms. Maier stated that there is an addition to this section. Mr. Winzig referred to letter (d), (2), regarding the Director to cause any such tree or part thereof to be cut and removed together with any clean-up work required in the event an owner does not comply with a Notice of Violation. Mr. Winzig suggested adding language that would require the owner to reimburse the City for the expenses incurred in removing the tree.

Mr. Barbour stated that current practice is reimbursement by the property owner. If necessary, the procedure goes through the Rocky River Court to enable entry to private property. Mr. Winzig stated that there is language for assessing the cost against the owner of such lot or parcel in Section 547.05.

Mr. Barbour commented that the former Section 547.14 gives the Public Service Director the authority for removal or trimming of trees.

547.04 Boundary Line Trees. Ms. Maier stated that there have been questions about the 50/50 or equal responsibility to maintain the tree. Ms. Maier asked Law Director Barbour if there is good legal backing for the equal responsibility. Mr. Barbour asked Director Liskovec the end result of what is trying to be achieved with this section. Mr. Liskovec stated the need to establish a boundary line when there is disagreement about ownership between neighbors.

Mr. Barbour stated that he might suggest using the word “jointly” instead of “equally.” Jointly would not require the City to arbitrarily assign a percentage value, which seems like over-reach. If the City went to court for requiring the removal of a tree, they would have to prove the violation which would include ownership.

Mr. Liskovec stated that there are instances where the City undertakes the boundary line survey to prove ownership, which can be costly. There is not a mechanism in place to recover the survey cost.

Mr. Barbour expressed dislike with the section, stating that it is the City telling the property owner what their rights are when they may be wrong. It may not be a practical application of the law. Presently neighbors would be jointly responsible for a tree that is shared at the property line. If consulted, the Law Director would suggest citing both property owners and have a discussion about the percentage of responsibility. He suggested putting a question mark at this section and revisiting.

Ms. Maier noted that this section will be flagged and revisited. She also commented that when a boundary-line tree between the right-of-way and City-owned and private property the City shall be responsible to maintain the tree.

547.05 Trees Abutting or Fronting Public Property. There were no comments regarding this section.

547.06. Cutting, Injuring or Interfering with Trees. Mr. Winzig questioned what the penalty would be and who would determine the penalty. Law Director Barbour stated that the penalties section 547.99 defines the various penalties ranging from \$25.00 to \$1,000, and the misdemeanor offense. He noted that most of the building code or housing code violations are minor misdemeanors. The penalty might need to be reviewed further for this section. Section 9 of the Ohio Revised Code addresses someone cutting down a tree without the owner's permission. In this case there can be assessed damages in an amount triple to the value of the tree. This is a private clause covering property owner contracts. There have been arguments that this Revised Code section refers to property line trees, going back to the prior discussion. Ms. Maier asked Law Director Barbour if more research could be done on this section regarding penalties.

547.07 Approval to Plant Trees in Public Streets. Mr. Winzig stated that this section references the Master Street Tree Plan. Mr. Winzig asked if this is a public document or a document used by the City for planting and maintenance. Director Liskovec stated that it is a document that is available, although not publicized. It was developed by the Tree Commission in the late 1990's. A better, more usable format, is being prepared for future posting on the City website.

Mr. Winzig asked if the plan includes the tree identification work that was done last year. Mr. Liskovec stated that the Master Street Tree Plan is a planting guide. It inventories and indexes every street in the City, tree lawn side, and makes a determination of what would be an appropriate tree to put in the tree lawn space, following the rules for diversification of canopy. It is a guide more than the current information so that when the City plants trees there is methodology. Ms. Maier stated that this plan is different than the overall planting guidance for the City of types of trees and is specifically for the treelawns.

547.08 Interfering with Tree Roots – There were no comments.

547.09 Protecting Trees during Building Construction – Mr. Winzig asked if this is ever an issue in the City. Mr. Liskovec stated that he witnessed two incidents where there was work that was done in a treelawn area which resulted in damage to the tree. Ms. Maier stated that some of this has only to do with proper education of contractors.

547.10- Placing Deleterious Substances near Trees – There were no comments.

547.11 Attaching Electric Wires to Trees.

547.12 Fastening Electric Wires against Contact with Trees.

Mr. Winzig suggested combining these two sections. Law Director Barbour stated that there is a reason for the two different sections.

Mr. Liskovec stated that 547.11 would be affixing a wire to light the tree, versus a wire coming from a utility pole in 547.12.

547.13 Compliance to Remove Electric Wire Required. – There were no comments.

547.14 Interfering with City Planting, Caring or Removing of Trees. There were no comments.

547.15 Authority of Public Service Director. – There were no further comments.

547.16 Commercial Property, Undeveloped Residential Property and Properties formed by Division, Sub-Division or Demolition of Existing Dwelling.

Mr. Barbour suggested adding language that says prior to obtaining a permit that allows construction. We have to think about the different instances before subdividing property, or before performing a lot split. So that you tie into the requirements the necessity to comply before getting a permit, or they can't do their subdivision. This is the exaction that was discussed. Ms. Maier asked if this would be included in Pre-Construction Activities (a) General Regulations. Mr. Barbour agreed. He noted that Undeveloped Residential Property may mean vacant property. Mr. Barbour suggested that there be some kind of means where someone from the City is charged with rendering a decision. If someone wants to do some construction they would determine that the construction would not be possible without removing a tree. The ordinance needs to charge someone from the City with negotiating and rendering a decision, either the Building Department or Service Director.

Mr. Barbour asked if it is contemplated that a Tree Removal Permit would be required to take down the trees as part of Pre-Construction Activities. Ms. Maier stated that it would be part of the permit process.

Mr. Barbour stated that the way it is written is that the Tree Removal Permit would be applicable to commercial, undeveloped or vacant residential property, or properties formed by division, sub-division or demolition of existing dwelling. Before obtaining a construction permit, the requirements in the ordinance would have to be met.

Mr. Barbour stated that there may have to be thought about changing how the Pre-Construction Activities are written.

Mr. Winzig asked about Point No. (4) Landscape design shall include the preservation of existing protected trees. The language in this section is to be reviewed. Some cities have very specific documents for pre-construction, delineating the landscape plan and removal/replacement of trees with money that goes into a fund. Mr. Winzig will share some of the documents he has found in this regard.

Tree Removal Permit. Mr. Barbour stated that the problem that needs to be discussed further is

the case where a person just wants to remove a tree. Under a construction scenario, removal may be a valid exercise of the City's powers.

Mr. Winzig asked if there is a Bay Village Tree Fund in existence. Ms. Maier stated that the Green Team has established a Tree Fund. Mr. Winzig asked if a fund should be set up through the Finance Department. Mr. Barbour said that a fund can be set up if the need comes to pass in the future. The Green Team can donate funds to the City with recommendations with reasonable restrictions.

Due to time constraints, the review ended at this point and the next review will begin with Commercial Properties.

A comment on Chat by Colby Sattler was read stating:

“In a case of joint-tree dispute, would the city be amenable to the Tree Commission providing a forum for resolution as opposed to the City mandating responsibility?”

Mr. Barbour stated that there could be voluntary mediation between the homeowners and if they wanted to engage in that it would be a possibility.

There being no further discussion this evening, the meeting adjourned at 6:57 p.m.

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Sara Byrnes, Maier, Chair

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Joan Kemper, Clerk of Council