

City of Bay Village  
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE  
March 10, 2022  
9:30 a.m.

Members Present: Councilman Peter J. Winzig, Chair  
Councilwoman Lydia DeGeorge

Also Present: Building Director Eric Tuck-Macalla  
Director of Public Service and Properties Liskovec

Audience Debra Jesionowski, Larry Ludwig, Lorraine Riebel

Councilman Peter J. Winzig, Chairman of the Planning, Zoning, Public Buildings and Grounds Committee, called the meeting to order at 9:30 a.m., thanking everyone for their attendance this morning.

TREE ORDINANCE

Mr. Winzig stated that at the last Planning, Zoning, Public Buildings and Grounds Committee meeting the committee walked through the initial draft of a proposed revision to the Tree Commission. At this meeting the committee will review the draft again, and try to clarify any recommendations for any additions or deletions that were made. The goal is to arrive at a document that can be referred back to the Tree Commission, with a copy given to the Law Director to actually craft the proposed amendment.

547.01 PURPOSE

**Ms. DeGeorge** noted that at the meeting of the committee held February 22, 2022, the committee determined to leave out the references to the ANSI and Best Practices. Mr. Winzig agreed, stating that the plan is to leave out those references from this document. The thought is that the reference could come from the Tree Commission.

Debra Jesionowski, member of the Tree Commission, asked if the reference to the ISO standard will be omitted and after the Law Director rewrites the ordinance it will go back to the Tree Commission.

Mr. Winzig stated that at this point they will ask the Law Director if it should remain in the ordinance. Both are recommendations and the key is to not write the ordinance to be punitive. It will be information for the residents and not necessarily tied to a penalty. Both are reference documents and not necessarily law. If someone did not follow the guidelines, the committee does not want it to be punitive. The committee will ask the Law Director if it can remain that way in the ordinance or is it best to take it out and have a document that can be put on line and available for the residents in more detail.

Ms. DeGeorge stated that the committee discussed the references at their last meeting but came

to the conclusion that they cannot be put in the ordinance as much as the education piece regarding the Cleveland Tree Plan. We already have the Grand and Glorious Tree reference in Section 146.02 of the Codified Ordinances and whatever else the Tree Commission might recommend that would be a good practice within the City of Bay Village. Many of these things speak to a larger city, and specifically to the publicly owned trees. We are looking more for the residential piece. The Cleveland Tree Plan, along with the Grand and Glorious designation and the International Society of Arboriculture may not be in the ordinance itself but will be reference pieces.

Ms. Lorraine Riebel stated that she believes that information will be very helpful for residents. There is a lot of misunderstanding and ignorance about trees in regard to planting and cutting them down. Ms. Riebel had an elderly neighbor who had a spruce tree that had nothing wrong with it. A neighbor had complained that the tree was going to fall on her house. Because the elderly woman did not want to have trouble she decided to take it down. It was a beautiful Serbian Spruce, very, very tall. If the owner had thought it through, and gotten a consult to find out there was nothing wrong with the tree, that it was healthy, it might have been saved.

Ms. DeGeorge stated that the “might” piece, in part, is one of the struggles the committee has when a resident takes down what is perceived to be a healthy tree.

Ms. Riebel stated that a couple near her did a huge addition to their home, cutting down trees in the process.

Ms. DeGeorge stated that in different sections of the code there are always references for information.

Building Director Tuck-Macalla stated that referencing things in ordinances may be helpful to direct people to educational sources.

Mr. Winzig stated that in the previous ordinance there was noted that a Master Tree Plan is on file at city hall. Director of Public Service and Properties Liskovec informed Mr. Winzig that the Master Tree Plan is an electronic copy now, and no longer a hard copy. There may still be an option to reference documentation, but it would have to be available to residents.

Mr. Tuck-Macalla stated that the thing about referencing documents in the ordinances is those items will become irrelevant at some point but will still be included in the ordinance.

Ms. DeGeorge stated that she always looks at the ordinances as what is law and what can be enforced. The references really can't be enforced; they are just references and recommendations.

Ms. Riebel noted that the website says the Bay Village is a city of trees and she hopes that it stays that way. In having a section on the website dedicated to trees and tree care for people who move into town is helpful in the mission of tree care and preservation. The references and contact information could be included.

547.02 DEFINITIONS

Ms. DeGeorge stated that the only thing discussed in this section was the cross referencing to the riparian zone.

547.04 BOUNDARY LINE TREES

Mr. Winzig stated that the goal was to try not to state in the ordinance a percentage of responsibility for those having boundary line trees. The recommendation from the Law Director was to say that residents would work it out between themselves to share in the cost.

Ms. DeGeorge stated that the decision about leaving this section in the ordinance or trying to define the responsibility for boundary line trees will be left to the discretion of the Law Director.

TREES ON PUBLIC PROPERTY

Ms. DeGeorge stated that some of the requirements in this section are redundant, or not in the correct order. There must be a way to sum up all the injury to a public tree in less words and sections, perhaps combining sections (a) and (c). The sections all say that you can't do anything with a public tree, but using a lot of words and a lot of sections.

Mr. Winzig stated that the section could be simplified by stating "No person shall:" and then listing a series of bullet point items that are not redundant.

TREES ON PRIVATE PROPERTY OVERHANGING PUBLIC PROPERTY AND/OR DISEASED TREES

Mr. Winzig stated that he felt this section was very clear.

Ms. DeGeorge questioned Part (d) and the reference to "Director." She suggested that the reference in Part A that states Director of Public Service and Properties and/or Building Director may need to be changed to specifically state one of the Directors.

Mr. Tuck-Macalla stated that it will depend on how it will be organized. As it is now, complaints come to the Building Department, but tree related guidance is directed to the Service Department.

Commercial area development is subject to the Building Department. A Planning Commission document for commercial development will be sent to both the Tree Commission and the Service Department for review. He noted the comparison with the Sidewalk Replacement Program, which was originally assigned to the Building Department and then taken over by the Service Department due to the lack of personnel to handle the program in the Building Department. The section referenced by Ms. DeGeorge is written as "Director" so that the administration can appoint the department that has the personnel to take care of the inspections.

Ms. DeGeorge asked if it would be fair to give the residents reading the code a starting point.

Mr. Winzig stated that a note will be made to refine that section before publication.

Ms. Riebel stated that she lives on Porter Creek, near the Wolf Road Bridge. When the bridge was narrowed in the past it created water force erosion which continues to be a problem since 1992. Of seven mature Oak trees, only two are left. The others fell into the creek and were eventually swept away. There is an increasing amount of erosion and water and because the City did the embankment along the south bank of the creek because of exposed sanitary pipes in the creek bed it is changing the course and force of the water and will affect the height of the water. Ms. Riebel contacted Service Director Liskovec and Mr. Winzig. She spoke with the City Engineer by email and he stated there is no extra water, which she does not accept, noting it is now reaching the wall level on the south bank, which is about 5 ½ to 6 ft. high. The trees get undercut and fall. Ms. Riebel noted that she sometimes questions the expertise of people in different positions, citing her experience with losing an Ash tree without notification from the City.

Mr. Winzig stated that he does not know if the tree ordinance itself is a document that can address water erosion. That is a different issue and may be more of a resident issue as opposed to a city issue.

Ms. Riebel stated that the creek is used for storm water. If it wasn't being used as a storm water runoff, it would not be as deep as it is.

Ms. Riebel noted that her home was built in 1958 and the water drains to the creek. The home is without pipes that connect to the street. Neighbors have storm sewer pipes that went to the ground.

The previous owners were cited to connect to the storm system, and it was never done. The new owners dug a ditch between Ms. Riebel's home their home. Ms. Riebel has experienced water in her basement, resulting in over \$8,000 in damages.

Ms. DeGeorge repeated the conversation about the use of the word "Director" in Part (d) of the Private Property Trees to Mr. Tuck-Macalla.

Ms. DeGeorge asked Law Director Barbour, who stepped into the room briefly, if there has to be a specific department mentioned in the ordinance.

Mr. Barbour stated that it is better to have a specific person designated, if the ordinance has a penalty provision, and for a clear delineation of responsibility.

Ms. DeGeorge asked about the statement in Part (A) Private Property Trees that says "assess the cost thereof against the owner of such lot or parcel of land" when it is necessary to cut down or trim overhanging or diseased trees. If the trees are on public property the cost is borne by the City.

#### APPROVAL TO PLANT TREES IN PUBLIC RIGHT OF WAY STREETS.

Mr. Liskovec has approved the use of the term "public right-of-way" as used in the ordinance.

Mr. Winzig noted that there is reference in the document to recommend to City Council the yearly tree maintenance, protection and planting plan relative to the City Master Tree Plan. He will double check to make sure it exists and is used as an operational guideline.

547.16 COMMERCIAL PROPERTY, UNDEVELOPED RESIDENTIAL PROPERTY AND PROPERTIES FORMED BY DIVISION, SUB-DIVISION OR DEMOLITION OF EXISTING DWELLING.

Mr. Winzig stated that this section is in reference to commercial, undeveloped property and property formed by sub-division. He asked Mr. Tuck-Macalla if it is assumed that the developer will provide details regarding trees and plantings.

Mr. Tuck-Macalla stated it is a requirement that the developer present those details to the Planning Commission in the form of a landscape plan. Copies are sent to the Service Director and Tree Commission for comments which are reviewed by the Planning Commission. The plan is very detailed and includes species of plantings and where they will be planted. It also becomes part of the inspection process. If there is a question during the inspection process, the Service Department is consulted.

Mr. Winzig stated that the one goal of the residents that have given us input is that a developer should not go onto a piece of property and eliminate mature trees.

Mr. Tuck-Macalla stated that presently that is not addressed.

Mr. Winzig asked if there is often a recommendation from the Tree Commission to try not to take trees down. This is the request we are hearing from the residents. We are trying to determine if that type of language is realistic in the ordinance.

Mr. Tuck-Macalla stated that the only language now to prevent tree removal is in reference to the riparian zone.

Ms. DeGeorge questioned whether the ordinance needs to reference the Planning Commission.

Mr. Winzig stated that (b) (4) under Pre-Construction Activities states that the landscape design shall include the preservation of existing protected trees.

Ms. Riebel asked if she is liable for penalties by the City if she is losing trees through erosion.

Mr. Winzig informed Ms. Riebel that she would not be liable for the loss of the trees.

Mr. Winzig stated that it is the goal of the Tree Commission to have this language in the revised ordinance.

Ms. Jesionowski stated that her understanding is the documents we are reviewing are proposed

and the objective is to conserve trees. When a landscape design is required, the landscape design will be the future state of the parcel, and does not include a survey of what is existing on the parcel. If (b)(4) says that the landscape design shall include the preservation of existing trees, there is no identification of what is to be protected because there is no pre-construction design or survey. That is confusing because it is vague at that point. This may be something that needs to be discussed. Ms. Jesionowski stated that she is new on the Commission and this ordinance update has been in process for years. As Mr. Barbour would say, if we are going to enforce this we need to be clear.

Ms. DeGeorge asked if a pre-construction survey would be something we should expect the Planning Commission to ask for, since they will be looking at the “after.” Should they also be looking at the “before”?

Mr. Tuck-Macalla stated that this requirement can be added to the documents given to the applicant. A reference to the Planning Commission ordinance can be added to this ordinance. The document can be added to the package given to the Planning Commission and to the arborist for his review.

Ms. DeGeorge asked if the arborist would be the one to do the pre-construction survey of protected trees.

Ms. Jesionowski stated that the Service Director, who is also an arborist, would be involved.

Ms. DeGeorge stated that the construction company would not want to be trusted with doing their own survey.

Mr. Tuck-Macalla stated that a third party is used for many things for different reasons. We would have the construction company hire someone to do the survey. The survey would then go to the Service Director and the Arborist to review.

Ms. DeGeorge asked if it would be a requirement for the construction company to hire an arborist to determine the protected trees and report to the Building Director.

Ms. Jesionowski stated that this sounds good to her as the representative to the Tree Commission because that would give strength to the ordinance and keep a certified arborist involved in the process talking about specific trees.

Mr. Winzig noted that there are a number of communities around the country that have this step. In Montgomery County, Maryland they have incorporated tree conservation requirements into the development plan process. Applicants are required to submit a natural inventory map that shows tree cover, delineating groups of trees of similar types or species, along with identifying individual trees, a map showing the range of height, caliper of trees in a group, and the appearance of trees and their indication of health. The ordinance further requires the notation of specimen trees on the map.

In St. John’s County, Florida, a construction plan review requires the issuance of a land clearing

construction permit. The applicant must supply a detailed landscape plan which includes a tree survey showing all specimen, historic, protected trees on the site. It requires marking which trees are proposed for removal, and planting the size, location, species and spacing of trees certified by a registered land surveyor, registered engineer, registered landscape architect or certified arborist. The County has similar requirements for rezoning.

Mr. Winzig stated that a couple others can be certified. Oftentimes we look at are State of Ohio ordinances because they are close to home. There is also a reference to one in Maryland, one in Cape Cod and one in Washington.

Mr. Winzig likes the idea of a plan, before and after, so it is clear and provides the opportunity to know exactly what to expect.

Ms. DeGeorge stated that the ordinance should define the application, and written statement which contains the reason for removal of protected trees. Do we have a list of acceptable reasons? Or, unacceptable reasons? Where is the back-up to that section?

Mr. Tuck-Macalla stated that could be a conversation that the Planning Commission has with the applicant.

Ms. DeGeorge stated we are asking for a reason, but are we going to disallow based on reasons? If we are not, should that even be in there? We need to know the reason for allowing the removal of a protected tree, or disallowing it, before we can make the statement.

Mr. Ludwig stated that going back to the Tree Preservation Plan that might be required, there can be a survey to look at all the trees, their size, and type and put it on the plan. But, if there is help needed an arborist will be required. You can make it just a simple plan but a survey insures that it will be done correctly, or you can have an arborist included as well who would include the species of the tree.

Ms. DeGeorge stated that we would run into that if we had a surveyor do it. Someone might want an arborist to look at a tree because they might think it is diseased.

Ms. Riebel stated that a survey is required, or a variable draft of your yard regarding buildings and boundary lines for the property for a fence permit. Trees are not included, but in order to place a fence you are required to submit a map of your property. It would be reasonable to ask for a survey of trees on the property. Even just taking photographs can give some idea.

Mr. Winzig stated that the second half of the draft states that in the event the trees were taken down there will be some sort of cost to the developer to have those replaced on site or money will go into a tree fund that the City could then use to replant elsewhere. It is a two-step idea, that there would be clear identification with the understanding that, depending on the scale of the tree, there would be a cost for a tree that had to come down.

Ms. DeGeorge stated that basically then the tree removal requirement stating the reason is moot if the developer says I am just going to pay to take down the protected tree. There must be care

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in the wording.

Mr. Winzig stated that it must be clear who determines what ultimately comes down and what the expense for the developer would be. Is that the role of the Board of Zoning Appeals?

Ms. Jesionowski stated that it is not only recognizing the need to take down a tree, but it is the plan to remediate the loss by planting another tree or using the funds to plant.

Ms. Riebel asked if there is any possibility if a homeowner decides to cut down multiple trees on an existing developed lot there is a requirement for a permit.

Mr. Winzig stated that this is the idea on the new, proposed ordinance and the thought behind that is that the homeowner would use a certified tree removal company and that there be better communication to the City as far as when that activity would take place from a safety standpoint. Oftentimes we will see a truck come into a side street and take over three or four spots in front of a home with large cranes. It is somewhat disruptive. There would be a protocol for putting out cones, notifying the neighbor, and these types of things so it would be very clear for the homeowner to understand what they need to plan with their contractor. It is a homeowner expense, and a homeowner right to take down trees.

Ms. DeGeorge stated that during the Mayor's State of the City address he mentioned something about incentivizing residents to retain trees.

Mr. Tuck-Macalla stated that he is thinking of the education part because from the residents' standpoint they are looking to restrict people from taking trees down on their property. The Law Director has advised that we cannot do that. The middle ground would be to incentivize by providing education.

Mr. Ludwig asked how you would get past the Law Director's concern that the ordinance requiring a permit for the removal of a protected tree is really taking.

Ms. DeGeorge stated the question she had was how other cities or states do that and he is advising against it. If the Law Director drafts the ordinance and doesn't put it in, we cannot pass it. There needs to be an explanation of how other cities get away with it. It could be a matter of they just haven't been sued yet.

Mr. Tuck-Macalla stated that it is not that we can't recommend it, but we can't be punitive to someone if they take down a tree in their yard. They do have that right to do that. We can let them know that they shouldn't but we can't say we are going to take you to court. Similar to the rental house ordinance, we can tell someone we would like to do an interior inspection of your rental property, but if they don't permit entry we can't pull their license or take them to court.

Mr. Ludwig reiterated that the Law Director wants to avoid legal action for the taking of property.

Ms. Riebel suggested that if the Mayor makes it a community project and rallies support and

there is evidence that this is a good thing to make our environment healthier, more people would think about steps they can take for environmental health.

Mr. Winzig stated that the designation for that responsibility so far is in the hands of the Tree Commission. There is information on the current website but one of the goals is that the information can be expanded further.

547.17 REMOVAL OF PROTECTED TREES ON RESIDENTIAL PROPERTY, EXCLUDING PROPERTIES FORMED BY DIVISION, SUB-DIVISION OR DEMOLITION OF EXISTING DWELLING.

Ms. DeGeorge asked if the committee is removing the tree placement requirement.

Mr. Winzig stated that Section 547.17, and the Tree Replacement Requirements and Equivalent Bay Village Tree Fund Fees which follow, are both proposed and at this point are not included in the ordinance.

547.18 EXEMPTIONS

547.19 COMPLIANCE

The language in these sections are for the Law Director's review and approval.

Mr. Winzig stated that he will look at other published ordinances that may help with language for the Tree Removal Permit section. All proposed language will be sent to the Tree Commission to be sure it is best language and addresses the polls that were sent out on the ordinance.

Mr. Winzig called upon the audience members, including the representatives of the Tree Commission, for further comments.

Ms. Riebel asked if the Tree Commission information is on the City website.

Ms. Jesionowski stated that the Service Department, Forestry Division, has information and resources on the City website. The Tree Commission also has a page with resources. On the city site the Tree Commission list of members, agendas, and minutes as they are published are all available. The Tree Commission meetings are open to the public, held on the second Tuesday of the month at 7 p.m. at Bay Village City Hall. Ms. Jesionowski noted that the Tree Commission serves in an advisory capacity. Ms. Jesionowski noted that currently there is a vacancy on the Tree Commission.

Mr. Winzig thanked everyone for their comments and attendance and the meeting adjourned at 10:40 a.m.

Planning and Zoning Committee  
March 10, 2022

Peter J. Winzig, Chair

Joan T. Kemper, Clerk of Council