

City of Bay Village  
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE  
March 29, 2021  
6:00 p.m.

Members Present: Councilwoman Sara Byrnes Maier, Chairman  
Councilwoman Lydia DeGeorge  
Councilman Peter J. Winzig.

Also Present: Law Director Mark Barbour  
President of Council Dwight Clark  
Councilman Thomas Kelly  
Councilman Michael Greco  
Director of Public Service and Properties Liskovec

Audience by Zoom: Rich Frank, Mike Polinski, Rosemary Kesselman,  
Dave Patzwahl, Leila Atassi, Debra Jesionowski, Colby Sattler, Daisy,  
Manu Chopra, Galaxy S10.

Ms. Maier called the meeting to order and distributed the most recent copy of the draft of the Tree Ordinance, the matter that is before the committee this evening. The copy distributed includes the mark-ups from all the discussion at the meeting held March 1, 2021. At the March 1 meeting the committee had gone through the Commercial Properties section and talked about the situation with new builds, or where there is a building permit issued and asking for a planting list.

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

Ms. Maier called for any comments regarding Section 547.17.

Mr. Barbour suggested that Section 547.17 (a), (b) and (c) be the same as Section 547.16. The application process for a tree removal permit would be the same as listed in Section 547.16.

Mr. Winzig asked if (b) (2) where the resident would remediate the loss of the protected tree follows along the same as the commercial side.

Mr. Barbour stated that there is a difference in that you do not have to have the site layout and design. The tree removal permit would be exactly the same. Mr. Barbour stated that further discussion is needed about the resident needing to remediate the loss of a protected tree. Mr. Winzig suggested a formula that would help the resident determine that if a larger tree is removed could the remediation be multiples of smaller trees equal to the tree that was removed.

Mr. Barbour suggestion discussion of Section 547.17 (b) Receipt of tree removal permit, so that there are not problems with regulatory taking. Some of the other cities have a two tier fee based

on certain size.

Ms. Maier stated that the intent of the Tree Commission is not monetary but to induce people to replant on their property. If not, to contribute funds to help promote the tree canopy.

Mr. Barbour stated that commercial property has more vacant land that is connected to the permit process, needing a construction permit, not just a tree removal permit. They have a more involved fee scale. If it is just someone taking a tree down on their property it is a more simplified process.

**Residential Property – Not including development through lot division, subdivision and demolition of existing dwelling**

One quarter of the total inches at DBH removal of protected trees must be replaced from an approved list provided by the Service Director or designee on affected property in equivalent caliper inches. For example: the removal of a 24-inch DBH tree must be replaced with a tree or trees with a combined total of 6-inch caliper.

If the property is unable to accommodate or owner unwilling to replace according to the above requirements, compliance can be met with a monetary deposit to the Bay Village Tree Fund of Ten Dollars (\$10.00) per one-inch DBH of protected trees removed and a minimum of One Hundred Fifty Dollars (\$150.00) and up to a maximum of One Thousand Dollars (\$1,000.00).

Mr. Barbour discussed the matter of who will decide if the property is unable to accommodate, stating that he believes it should be the City. There is no difference between unwilling and unable to accommodate. A section should probably be added as to whether the Service Department or the Building Department would have the authority for the decision.

**547.18 EXEMPTIONS.**

- (a) The requirements of this chapter shall be followed except:
  - (1) During a period of emergency, such as a tornado, ice storm, flood or other such extreme act of nature as declared by the Director.
  - (2) If the failure to remove a tree would constitute an imminent danger to the environment, property, public health, safety, or welfare due to the hazardous or dangerous condition of such tree as verified prior to removal by the Director.
  - (3) For necessary tree removal by a public agency or utility company within platted or dedicated utility easements.
- (b) The remediation for removal of a protected tree is exempt if the tree is dead, dying or diseased as approved prior to removal by the Director through the permit process.

**Director of Public Service and Properties** Liskovec commented about the species of trees. The native Dogwood tree is plagued with many different issues. The Chinese Dogwood is much more resilient and is a very good substitute. The right tree in the right place is an important factor.

**547.19 COMPLIANCE.**

It shall be unlawful for any person, firm or corporation, including public utilities, to fail to abide by the terms of any tree preservation plan or tree removal permit issued by the city. If, in the opinion of the Director, the necessary precautions as specified in the tree preservation plan were not undertaken before construction commenced or are not maintained at any time during construction, a stop work order will be issued by the city until such time as the permittee complies with these precautions. Additionally, any loss of a protected tree due to non-compliance and or the failure to follow a permitted remediation plan will result in a penalty.

Additionally, when the Director finds it necessary to order the trimming or removal of trees or shrubs upon public property as provided in Section 547.07, or upon private property as provided in Section 547.06, he shall serve a written order upon the owners of the lot or parcel of land by mailing a copy of such order to the last known address of the owner by first class mail. The order shall set forth a time limit, not to exceed 30 days for compliance. In case of extreme danger to person or property compliance may be required immediately or the danger may be removed by the City without notice. Upon failure to comply with the order within the specified time, the City may remedy the condition or contract with others for such purpose and charge the cost thereof to the owner. The person remedying the condition shall be authorized to enter upon the premises for that purpose. If the cost of remedying the condition is not paid within ten days after a statement is mailed, such cost shall be levied against the property upon which the hazard exists, shall constitute a lien thereon and shall be certified to the County Auditor to be collected in the same manner as other taxes. The levying of such an assessment shall not affect the owner's liability for a fine as hereinafter provided.

Ms. Maier stated that this section would relate to the decision of whether the Director will be the Director of the Building Department or the Service Department.

**547.99 PENALTIES.**

Whoever violates any provision of this chapter or any rule or regulation promulgated thereunder or fails to comply therewith or with any written notice or written order issued thereunder shall be guilty of a misdemeanor and upon conviction thereof be fined not less than Twenty-Five Dollars (\$25.00) nor more than One Thousand Dollars (\$1,000.00) for a first offense and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree. Each day such violation occurs or continues shall constitute a separate offense.

Violation of Sections 547.16 and 547.17 shall result in a fine twice the amount of the normal replacement requirements to the Tree Fund outlined in the respective sections and shall supersede the penalties listed in this section.

Mr. Barbour stated that the only addition is the second paragraph regarding violation of Sections 547.16 and 547.17. In addition to paying the fine imposed by the Court, it seems that the thought of the original writer was having a fine that is twice as much specific to violation of Section 547.16 and 547.17. Mr. Barbour stated that the first paragraph gives the Judge wide discretion, but the second section does not seem to fit right. He stated that he understands the intent, which

is to motivate to people to follow the ordinance and the punishment if they don't or to act as a deterrent for others who may not follow.

Mr. Winzig stated that there is also no mention for a commercial project that violates the ordinance in that the Service Director or Building Director would have the right to stop all construction if necessary. Other ordinances state that in the event the protection of trees and the cutting of trees is not followed as approved by the Building Director or Service Department, the City has the right to stop the project until corrected. Mr. Winzig noted this language is in some of the sample documents he provided. There is language that states that for a commercial site or construction on new property the builder has a period of time to do the replanting in the event protected trees are taken out. It is clearly spelled out and if it is not completed there is a penalty. There is a time frame of one year to complete the planting schedule as presented.

Discussion followed concerning the need to decide between the City authority, whether it be the Service Director or Building Director. Mr. Liskovec noted that the Building Director would have the power to halt construction. Also, the Building Department has the process for issuing permits established. While it could be possible to transfer data between departments, it would take some work to establish a similar process with permitting software in the Service Department. As far as the inspections are concerned, there are people on staff in the Service Department that have the education and training in regard to trees.

Mr. Barbour stated that members of the Tree Commission brought out the need for a contractor with specific standards. This is included in the new draft of the ordinance.

Ms. Maier referred to the suggestion of Councilman Kelly about adding in more maintenance.

Mr. Winzig referred to the Red Oak Subdivision development that impacts a cluster of forest area and trees, and how to best manage that for both the City and the potential builder, and the Heinen's Grocery Store parking lot expansion project. When Mr. Heinen visited Council there was discussion about proper landscaping and replanting of trees and shrubbery. There was not a good, solid answer for Mr. Heinen, but everyone was concerned that the project would be handled properly. Feedback has been received from residents who are genuinely concerned about the loss of the large Oak Trees. There may be legislation around the country that we could use for examples. Mr. Winzig distributed copies of sample legislation to the committee members.

A White Paper was done by the Montgomery Tree Committee in Montgomery, Alabama, which is 65 pages in length. It is a Best Practices recommendation that speaks of legislation and issues that should be considered when writing a new ordinance. Copies were distributed to the Committee.

Mr. Winzig also referred to the Mecklenburg, North Carolina document as an outstanding tree ordinance. He noted that it is very detailed and sections of it define Heritage Trees, which is a matter that has come up here in Bay Village in regard to the Oak Trees. Invasive plant species are also included in their ordinance. Page three talks about protected and specimen trees and defines those clearly. Page four describes the intent of the chapter and preventing soil erosion or

just the concept of shade area and how that can impact temperature control, which was originally discussed in the document from the Tree Commission of Bay Village. Page five has an excellent section about new development which is clearly written. They also have a Tree Advisory Commission like the Bay Village Tree Commission. Page 6 has a section called “Maintenance and Protection of Trees” which goes back to Councilman Kelly’s comment about giving the residents very clear guidelines on pruning and maintenance, and giving them information so they know exactly what to do. In the event that they do pruning or there is additional wood, does that get removed from the site if it is diseased, and how best to manage that. Page 7 talks about caliper inches and the same language similar to Bay Village’s ordinance. Page 8 is very clear on their permits for both the resident and commercial people. Page 10, Section (B) talks about a Tree Safe Area, which has been discussed here in Bay Village about working with the Recreation Department and the Service Department. Are there areas within the City that we actually want as tree safe areas, along the waterways or along the lakefront if the City believes should be protected? Page 11 talks about the protection of waterways, and the bottom of Page 11 is very clear about a commercial site, stating that a minimum of 50% of the overall commercial site must be preserved as a tree safe area. The language is very strong about giving a developer clear guidelines on exactly what the intent of the City would be. Page 13 discussed more tree safe areas for single family development. There is both the commercial language and the development language. Page 15 goes into a lot size, and a replacement program that gives good guidelines on supplemental plantings.

Mr. Barbour commented that he prefers to use Ohio language because it has passed the test of time.

Another document presented by Mr. Winzig is titled, “A Draft New Ordinance Outline” and 90% of this draft is from the City of Dublin, Ohio. It has many of the attributes found in the Mecklenburg document, but is more Ohio specific. He suggested going through this document and identifying sections that Bay Village may like. The Dublin document includes a very large section on landscape and is very clear on mount height and the type of plantings and bushes, and blocking of headlights. The Bay Village landscape document has a paragraph that was repeated four times, with the words identifying the districts as the only change. Dublin’s document, in comparison, is extremely robust. If we want to strengthen our document in light of the new Heinen’s project or the Multi-Use Zoning Overlay, the Dublin document gives really clear guidelines on expectations of planting. They get into detail on the number of parking spaces equal to the number of trees and shrubbery that needs to be planted.

Mr. Winzig also distributed a proposed Tree Preservation Plan. He shared it with the Tree Commission and Director Liskovec for consideration of having a plan to match the vision when we are building our ordinance, so that there is a five or ten year plan for reference.

Mr. Winzig summarized, stating that within these documents he distributed he believes the Committee can strengthen what we have. The work that the Tree Commission did is really good, but there is other content that can make it better, which is our goal.

Ms. Maier commented on the points in the documents distributed by Mr. Winzig. She noted the wish to have a discussion on how far the Committee feels comfortable going with the question of private property.

Mr. Winzig stated that with all the research he did across the country he could not find an example of the concept of fining a private property owner for taking down trees. There was an attempt in Texas that was lost at the court level. Aside from a protected tree or a Heritage Tree, he could not find a penalty. Ms. DeGeorge had the same experience in her search efforts. She asked if the county has a program for Heritage Trees. Mr. Liskovec stated that he does not know of a program. The Cuyahoga County Soil and Water District does have a legacy tree planting program.

Mr. Winzig stated that he likes the idea of a protected tree. There was legislation in Florida protecting certain types of palm trees. There was also an ordinance in Linwood, Washington listing certain types of trees as protected trees. Mr. Winzig suggested the possibility of working with the City Arborist and the Tree Commission to make a decision that the Mighty Oaks in Bay Village are protected.

Ms. DeGeorge stated that when talking of protected trees in Bay Village, we have talked more about the size of trees. As some of the trees are aging out, it might be difficult, but health and size could be determining factors.

Ms. Maier stated that she has been looking at the higher level, noting that the City is allowed to zone for aesthetics. Trees provide public benefits, and there is more to them than the aesthetics. She noted the necessity of determining how far the City wants to go and legally where we can tread. The idea of having a classification of some protected trees, is that something that we can defensively put into the tree ordinance?

Mr. Barbour stated that he does not think he has seen anything of the nature of protected trees in Ohio ordinances. Ms. Maier stated that there is legislation in the south where a certain species lives for 400 years.

Mr. Barbour noted that some of the things referenced by Mr. Winzig need to be in the Planning and Zoning Code, rather than the General Code. Ms. Maier stated that some of the material may not need to be in the code itself, but included in educational pieces. Mr. Winzig noted that the Dublin documents includes links to other codes.

Ms. Maier stated that from the Chair standpoint, she is in favor of spending as much time as necessary to make sure we have the best product. She would like to be more descriptive on the commercial side in regard to landscaping, but less so on the residential side.

Mr. Winzig stated that the Dublin document weighs heavily on the commercial development side. There are general guidelines, almost common sense rules, for homeowners. The detail in the document both helps guide development and avoid legislation. The material is very specific in regard to landscaping when developing commercial areas, including number of trees per parking spot, drainage, water management, bio-diversity, etc.

Ms. DeGeorge asked how deeply we wish to go into a landscaping plan, e.g., places for shade in the Mixed-Use Zoning Overlay. Ms. Maier stated that there is some language in the ordinance, but the discretion lies with the Planning Commission and their authority to make determinations on specific projects.

Ms. DeGeorge referred to the new library development and asked about their responsibility for landscaping. Are they required to fill back in landscaping that would die during the construction?

Mayor Koomar stated that when the Bay Middle School was built there was a landscaping plan and the Planning Commission incorporated it into their motion for approval.

Mr. Winzig stated that the draft for the Mixed-Use Overlay has a strong section on landscaping and screening. (Page 22) It has general requirements for residential and non-residential uses, a full section on landscaping parking lots, and tree height and plantings. It could be a reference in the tree ordinance.

Ms. DeGeorge stated that we have discussed having a list of certified tree trimmers/ contractors for the residents to rely on. Ms. Maier stated that the contractors do have to register with the City and pay the registration fee on an annual basis. Some, but not all, have certified arborists on their staff, but any of the certifications of the company could be listed.

Mr. Barbour stated that it could be required that they have insurance and they be certified. A list could be created of all those registered, showing who has certifications. However, you cannot exclude people from doing business in the City if they don't have a certification that is not otherwise required.

Ms. Maier stated that if a contractor violates the rules of the City they could be barred from getting a permit for a certain period of time.

Mr. Winzig stated that the issue of Oak Wilt has a certain time frame of when it is most appropriate for trimming and we would not want them violating that time frame. In other communities it is not just the tree trimming, it is the management of the drop and left overs, as well as the period of time when the site should be cleared properly. One community had, for homeowners that were going to store the wood, if it is diseased they cannot store it because it would spread the disease into the community. There are good guidelines out there that we would be very interested in reviewing.

Mr. Barbour noted that the State of Ohio does not put any requirements or restrictions on tree trimmers or tree companies. Mr. Liskovec agreed, but noted that it has become a best management practice.

Ms. Maier stated that the City can provide assistance with the process by having a more sophisticated list and prohibiting those who have violated guidelines.

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Ms. Maier suggested a joint meeting in the future with the Tree Commission to talk through the drafting of the legislation.

The chat line requested making available the documents provided by Mr. Winzig at this evening's meeting.

Mr. Winzig stated that the documents he provided will be included with the minutes of this evening's meeting. Ms. Maier suggested a landing page on the website. Mr. Winzig asked about the possibility of using Google Docs for everyone to log in and look at the documents and make comments.

Ms. Maier thanked everyone for their time 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