

**CITY OF ALBANY
TREE COMMISSION
Albany City Hall, City Council Chambers**

Thursday, October 18th, 2007
5:15 p.m.

MINUTES

Commission members present: Jay Neil, Glenn Dockter, Dick Miles, Rick Carter, Tom Krupicka

Commission members absent:

Staff present: Craig Carnagey, City Forester, Tari Hayes, P&R Admin., Marilyn Smith, Public Information Officer, Don Donovan, Planning Manager, Jim Delapoer, City Attorney

Others Present:

1. CALL TO ORDER

- Jay Neil called the meeting to order at 5:15 p.m.

2. ROLL CALL

3. COMMENTS FROM THE PUBLIC

Comments related to the Tree removal codes were heard under scheduled business.

-None

4. APPROVAL OF MINUTES

- The minutes from September 20, 2007 were approved unanimously.

5. SCHEDULED BUSINESS:

- Discussion of City Council Review of Tree Removal Codes
- Commission Chair Neil provided an overview the meeting agenda. Public input was solicited through an article in the DH, on the city website and the public information officer. The commission has received 25-30 comments from the public. All comments were forwarded to commission members. At the November meeting, the Commission will formulate recommendation(s) to the City Council and the City Forester will take those recommendations to the City Council.

- The City Forester gave an overview of the process, background, history that led up to this code review. The Commission has been reviewing draft code changes, and narrowed the scope to three specific questions:
 1. Should the codes be consolidated into one section of the city codes, currently they are in the AMC and the ADC?
 2. Should small residential lots be exempt from permit requirements?
 3. Does ADC 9.208 related to tree felling on development lots need additional language to clarify criteria?
- City Attorney Jim Delapoer was asked to provide clarification and opinion on the three questions above. When the tree ordinances were enacted, they were put in two different sections of the code for a reason. Currently appeals of ADC tree felling enforcement would go to the Land Use Board of Appeals (LUBA), because if you are making regulation about the use of someone's property it is by definition a land use issue. LUBA appeals cost the city between \$5,000 and \$6,000 in legal fees. In the AMC, whether a single tree is cut is not a land use issue (his opinion). He doesn't think it would be appropriate to put all the regulations in the ADC. Additionally there is a distinction between removing trees in the development of a housing subdivision versus removing a tree on a residential lot; the first is truly is a development code issue, the second is not. Anytime there is cutting of more than five trees it becomes a land use issue and it would be appropriate to regulate in the ADC.

His next question would be how do citizens want violations prosecuted? Since the tree ordinance was put into effect (2001) there have been four reported violations. The first two occurred within the first six months to a year after the code was adopted. Those cases resulted in plea bargains, requiring the violators to donate money to tree planting activities; the publicity served to remind the people that new tree regulations in Albany existed. In both cases people claimed they didn't know about the laws.

The city spends a lot of money on these cases. Currently tree felling without a permit is considered a misdemeanor, punishable by fines up to \$2,500 and a year in jail. Based on public comments he's read, these shouldn't be classified as a crime and he agrees with that. The other problem is in prosecuting a misdemeanor; the city has the huge burden of proving beyond a reasonable doubt that the person not only cut the trees, but that they knew the law required them to have a permit. One of the things he would like the Council to consider is to amend the ordinance, taking out the willfulness standards and making most of the prosecutions infractions. By doing this, it results in no jury trial, no vulnerability to a jail sentence and provides for a maximum fine up to \$750 per tree. Is it cheaper to violate the law and pay the fine, up to public discussion? The positive side is that the City could prosecute a lot more violations quickly and effectively.

- Don Donovan, Planning Manager for the City of Albany spoke next. Part of his duty is to review planning applications to cut five or more trees larger than 8" in diameter on property over 20,000 sq. ft. Of the two places that tree criteria are found, he only deals with the Development Code. Site plan review includes written information and drawings that show trees larger than 8" in diameter on the property and which ones a developer proposes to cut. The review includes three criteria to evaluate an application. Most of the site plan reviews they receive are in relationship to development proposals. Numbers compiled recently show that there were 2,543 tree removals requested in conjunction with developments, and 2,229 trees were approved to be cut. There's not one development that's been denied because trees weren't allowed to be cut. They've been able to save trees that didn't need to be cut or that were unique

in some way. They've saved a number of White Oaks. It's been their experience that site plan review works pretty well in allowing development and saving trees at the same time. They've received very few complaints from developers or neighbors. The site plan review criteria could use some work, specifically the need to balance new development with the requirement that the tree felling not result in a negative impact. At the time the rules were adopted in 2001 there was consensus that the regulations would accomplish what was needed. Donovan agrees that the commission and council should concentrate on the three issues presented. His opinion is that it may be time for the Tree Commission, the citizens and the City Council to restate why and to what extent they value trees and from a statement of values they should then be able to make clear what they want to accomplish with tree regulations.

- Question: for Don from Jay – Tree commission is only involved in issues dealing with Albany Municipal Code; in some cases, there seems to be misinformation on permit fees. Could he clarify?
 - From Don: When a developer comes in with a development application, the fee is \$960 not \$360. The \$360 is if someone wants to come in without a development proposal and there is no other application with it.
- Tree commission comments before public comment - NONE

Discussion of public input

- Dorothy Wilson submitted a written statement prior and would like to change her position on Paragraph 2; she now agrees with FOMAT's position and feels that in the AMC every tree including city trees should come before the Tree Commission, possibly via email or telephone.
- Mary Lou Ludlow – keep up the good work; keep our trees in good hands
- Bodie Dickerson – the official FOMAT position was submitted, she provided a quick review of FOMAT's position at Jay Neil's request.
 1. Should the tree removal codes be consolidated? No – same reason Mr. Delapoer gave.
 2. Should small residential lots be exempt from the removal code? Yes/ maybe – properties that are 3,500 sq ft or less should be treated differently but still require a permit, this is necessary in order to make sure that the properties were that small and to track trees taken down.
 - a. Willis Hill provided information that there are 745 parcels of 3,500 sq ft or less in the City of Albany
 - b. If a small property has a 25" tree or bigger, there wouldn't be room for much else on the lot
 3. Should the criteria for tree removal be made clearer? Yes – it would be helpful to refer to the 25" rule in the Development Code or it could look like a loophole to developers. There is a perception of unfairness to individual residential property rights who believe they have abided by the Tree Commission rules, when they read that developers have taken a large number of trees out without proper permitting (Clover Ridge Road). Additionally the punishment should fit the crime, wood is worth more than the fine that is levied; as a result, it becomes the cost of doing business.

- Bodie Dickerson– personal input – we need to make sure we ask the right questions. Start by asking what we value. It’s clear from the code that six years ago we valued our trees.
 1. Is the city’s current tree code effective? Yes and no, the AMC works as intended. There are those who come in unprepared or don’t follow up and those who are trying to avoid the process all together, in those cases the code doesn’t function for them the way it should. She believes more than 18 large trees have been saved when citizens and developers accept that we have tough codes, it then doesn’t become necessary to come before the commission, they work around it.
 2. Correction in personal letter, Albany Heights was the neighborhood that tried to work within the code.
 3. How can the codes be made more effective? – ask Donovan and Delapoer how they would accomplish this. In 2000 and 2001 when the AMC’s tree language was written, all large trees should be treated the same no matter where they grew.
 4. Question for Mr. Delapoer – how do we pursue a case when a developer comes in and clears the land before submitting a development plan?
 - Delapoer: It depends on the specifics of the case and what the judge decides is the appropriate fine.
- Scott Keeney – He took down a 16” DBH in his yard two weeks ago due to safety concerns. He does not want to see the commission become a tree removal commission by default. The 90% tree removal figure is decimation not protection. He questions the right of private property owners believing that trees belong to everyone, especially in this time of flipped properties, absentee landlords, etc.
- John Byrne moved to Albany for the trees, it alarms him that the city is considering loosening the ordinance when there doesn’t seem to be a problem. Every neighbor has at least one tree on their lot that matches the tree conditions for a permit, most of the lots are less than 20,000 feet. He wants to keep the neighborhood trees up. Specifics to the questions:
 1. Should it be consolidated, no – publish a pamphlet that clarifies in laymen’s terms what a citizen is supposed to do.
 2. Should small residential lots be exempt - absolutely not, history shows that when people have problems on the smaller lots, it gets taken care of?
 3. Development language revised - the language should be as objective as possible, people have been playing with it, it should be made perfectly clear how the criteria apply.
 4. With respect to the penalties- they should reflect the value and cost of a mature tree.
- Karen Rogers – keep codes separate, fine the way they are, small residential lot should be exempt from the code, and most do not have historic trees.
- Anthony Stuckart – he for one, is confused with two areas of the code, doesn’t seem to be anyone representing individual property rights at this meeting, believes trees don’t belong to everyone, legally the tree belongs to the property owner, (City attorney confirmed) small lots be exempt from code, yes – question how much public expense spent processing the 95% of permit requests that were approved.
 1. Jim Delapoer asked to clarify the above property rights question: people may own the land and own the trees legally, but government does regulate land ownership, zoning is an example because it has an impact on the broader spectrum.

2. Jay Neil, in response to the comment regarding not having personal property rights owners attending, the Tree Commission has done everything possible to notify citizens and seek their input.
- Mike Styler – believes that it’s a benefit for the entire community to preserve ”boulevard” trees (approximately 25’ round, not fully mature, healthy, where there’s no building around). He believes trees are being removed before they meet the permit criteria and there is nothing stopping a property owner from removing two or three a year, and then some more the next. If a tree is dead or a hazard, it should be removed.
 - Krupicka asked Mr. Delapoer if Measure 37 is upheld and is someone owned a house prior to the 2001 tree ordinance, where would a denial of a tree removal permit fall.
 - Delapoer’s opinion is that the tree regulations in Article 7 which are not in conjunction with development would not be land use regulations. This is his opinion, but the Court of Appeals and Supreme Court have not provided direction on this matter.

6. BUSINESS FROM THE COMMISSION – none

7. NEXT MEETING DATE

The next meeting of the Tree Commission is scheduled for Thursday, November 15, 2007, at 3:00 p.m. in the City Council Chambers in Albany City Hall.

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 6:30 p.m.

Submitted by,

Craig Carnagey
Parks Manager