

Tree Conservation Commission
Business Meeting/Work Session Minutes
City Hall, Arborist Division Conference Room
February 23, 2019, 9a-noon

Commission Members Attending: Elizabeth Ward, Katherine Moore, Stephanie Stuckey, Lawrence Richardson, Sarah Boles

City employees: Jonathan Futrell, COA Law Department, David Zapanick and Kathy Evans, Arborist Division.

Members of Public: Stephanie Coffin, Bobbie Wagoner, Tree Next Door

1. **Minutes.** January minutes approved by all present.

2. **Arborist Division update.**
 - Field arborist position open.
 - Pre-construction conferences. Not enough staff to conduct pre-construction conferences. Beginning with conferences for pre-demolition to ensure tree protection plan is accurate onsite per approved and sample site plan.
 - Reviewed and approved SOP for pre-demolition inspections. COA field arborists not required to wait onsite while position of fencing is corrected; arborists will have discretion regarding corrections to site conditions that do not conform with plan. Staff will discuss scenarios that require pass v. fail status for pre-demo inspection.

3. **“Legal 101”** Q and A with representative of Law Department, Jonathan Futrell.
 - **Hearing Procedures.**
 - Tree ordinance gives authority to Tree Conservation Commission to establish procedures so long as procedures do not conflict with the tree ordinance. Hearing is quasi-judicial. Evidence can be presented based on information parties elect to submit. Commissioners can give weight to evidence based on their understanding of its relevance.
 - Ordinance allows that evidence may be submitted prior to hearing if not available one week in advance. Commission recommendation: Evidence may not be submitted less than 48 hours in advance except in extenuating circumstances – in order to provide time for processing.
 - May ask speakers/parties to be seated during rebuttal. More orderly.
 - When should the Commission pose questions to parties? After discussion, TCC decided that questions should be held until both parties have presented appeal and appeal rebuttal, with the exception of clarifying questions, which may be asked at the end of individual testimony. This is primarily needed in appeals of preliminary approval. In appeals of fines/fees or permit denials, it may be best to question each party after their testimony.
 - When multiple parties are present in association with an appeal, speaker or Chair of TCC may ask all in support or opposition to stand. Letters may also be included in appeal packet and may be acknowledged on the record.

- **Deliberations**
 - TCC members discussed opportunities to deliberate about decision. J. Futrell advised that all deliberations should be at the hearing or in writing. Ordinance allows that “all appeals must be concluded or resolved within two months of the initial hearing.” Section 158-65(a)(5). Civil Service Board hears evidence and writes an opinion after 30 days. TCC has this option of putting decision in a detailed letter, which would need to be rendered within 60 days. After discussion, TCC concluded that it would exercise this option if needed for gathering more information but prefers to make a decision at the hearing where possible. Deliberations to be documented in order to be available for Superior Court.
 - Refer to the Tree Ordinance to extent possible.

- **Decisions.** Discussion about appeals in which end point is not clear.
 - D. Zaparanick requests that decision/directive be clear (e.g. “Save tree or return to TCC for another hearing,”) rather than leaving it the City Arborist to determine whether efforts to save tree(s) have been effectively exhausted.
 - If TCC requires that tree(s) be preserved and applicant chooses not to act, the appeal stands.
 - Motions/decision should reference ordinance when possible.
 - Motions/decisions should offer endpoint for decision
 - Fine will be removed after City Arborist confirms planting of x trees.
 - Plan will be approved when tree(s) a/b/c are shown as protected per provisions of the tree ordinance.
 - “Preserve tree(s), or permit should not be issued. If you cannot find a solution for preserving the tree(s), you may return to Commission to present results of reasonable efforts to design around tree(s).”
 - Consider requiring more substantial fencing for tree protection on any tree saved based on an appeal or where more than 15% of the critical root zone is impacted by construction.

- **Legal.** Staff attorney for Arborist Division and for Tree Conservation Commission will be appointed.

- **Other Discussions.**
 - TCC would like Arborist to share knowledge of non-compliance by applicant/appellant (e.g. tree company or builder that has received multiple fines).
 - Focus on issues at hand.
 - Avoid lectures or lessons.
 - If you find that your personal knowledge of the site or individuals involved gives you information not available to other members, abstain from vote. If you have relevant information to share, share it. Use questions to extent possible to clarify information that could be known by casual observer (e.g. Are the trees in the area where cars park on the weekends? Was the sidewalk recently repaired?).

- **Open Records requests.**
 - “Official” Open Records Request not necessary for obtaining readily available information, such as information about sites during public posting period for appeals. If a member of the public asks in person or just calls the Arborists Division, information in the public can certainly be provided.
 - Err on the side of providing information as requested. If it is public record, it can and should be provided.

4. **Urban Ecology Framework/Ordinance.**

- TCC will interface with consultants to make recommendations. Starting March/April.
- TCC recommends utilizing case studies to illustrate issues and test ideas for ordinance improvements (e.g. soil volume, open space, limits on parking).

5. **Zoning Code/Site Development/Tree Code interaction.**

- Per J. Futrell, many of these issues are policy decisions. Intent can be clarified in ordinance update.
- Discussed range of recent sites – pending appeals and other inquiries where stormwater and tree loss is a big concern – erosion after tree removal (Reynoldstown); two sites with trees proposed for removal in stream buffer; other sites where trees are removed to install stormwater management mechanisms.
- Discussed recent site where Site Development approved stormwater management that removed trees. Appealed to Tree Commission, which reversed decision. Other methods of stormwater management were approved. Briefly discussed possible solutions: pre-approval; environmental assessments; ordinance updates to address guidance to applicants and arborists regarding which trees **must** be saved and in which circumstances. (e.g. Development must protect structural root plate and 67% of the critical root zone of certain trees.).
- Questions raised, not resolved:
 - What are solutions for making the Codes more compatible?
 - How to contend with trend of using stock plans (not necessarily compatible with the dimensions, topography, and environmentally sensitive areas) that require tree removal that would not be required if house were designed for the site (often an existing house is demolished; even if the replacement house is not significantly larger, the older disturbed area is not necessarily re-used and the position of the new house results in tree loss).
 - Incidents where a variance is obtained to build in setback, but potential tree destruction was not considered.
 - Incidents where the selected stormwater management option destroys trees despite other options.
 - Incidents where it is not possible to meet post-development stormwater management options without destroying trees *or* reducing the building/driveway/patio/garage footprint.
- Recommend scheduling presentation by Site Development to better understand these issues and to receive overview of Post Development Stormwater Code. (contact Barry Amos).
- TCC authority:
 - *The Tree Conservation Commission shall have the authority to reverse, affirm, wholly or partly, or modify the administrative official's decision being appealed, and to that end shall have all of the powers of the administrative official. These powers shall include, where applicable, the power to direct the issuance of a permit, provided that all requirements imposed by this article and all other applicable laws are met. Sec 158-65 (a)(6)(a.).*
 - If direct the applicant to reverse, note specific decision to extent possible.

6. **Unpermitted tree cutting.** Limited time for discussion, but Commission would like to explore issues below.

- Are tree cutters required to hold a business license to work in COA, even if business is located elsewhere?
- What leverage is there for repeat offending companies?

- Is the arborist required to catch responsible party in act of removing the tree in order to write a citation to Municipal Court?
- If a citation is written, requiring tree company to appeal in Municipal Court, what is role of TCC?
- What leverage is there when we have only a company name/phone number or a physical address outside the city?
- Would licensing of tree companies be helpful in ensuring compliance with the law?
- Can Arborist Division post list of arborists/tree companies that complete a class on the City's ordinances? Or optional online registration with City – listing would be “free marketing” for these businesses? (Discuss with Doug Maples, Office of Bldgs).
- Best practices from other jurisdictions?
- **Possible actions:**
 - Consider letter to Commissioner describing problem and potential solutions.
 - Write additional inserts for water bill to reach non-internet residents.
 - Distribute info via planners at NPU meetings.
 - Link to ISA certified arborist on City website.

7. **Commission Membership.**

- Reminder financial disclosure forms mailed shortly.
- Recent contacts with two individuals interested in serving.
- Discussed attendance policy. Preferred policy: Commissioners should not miss more than three consecutive Business Meetings unless there are extenuating circumstances.
- Elect Co-Chairs; pending.

8. **New Business.**

Zoning 101. March 20 business meeting.

Will need two hearings – March 20, March 27. Discussed availability.