

**PARKS AND SHADE TREE COMMISSION
CITY OF REHOBOTH BEACH**

May 15, 2012

The Parks and Shade Tree Commission Meeting was called to order at 2:03 p.m. by Chair Priscilla Smith on Tuesday, May 15, 2012 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Ned Kesmodel
Ms. Marcia Maldeis
Chair Priscilla Smith
Ms. Jane Wyatt
Ms. Anne Hubbard

Also present: City Solicitor Glenn Mandalas
Building Inspector Terri Sullivan

A quorum was present.

Ms. Maldeis noted her husband, Mr. Stan Mills, sits on the Board of Commissioners.

APPROVAL OF MINUTES

Minutes of the May 17, 2011 Parks and Shade Tree Commission meeting were distributed prior to the meeting.

Ms. Jane Wyatt made a motion, seconded by Ms. Marcia Maldeis, to approve the minutes of the May 17, 2011 Parks and Shade Tree Commission as written. Motion carried unanimously.

ADMINISTRATIVE APPEAL HEARING

The purpose of this meeting was to conduct administrative appeal hearings pursuant to the Comprehensive Tree Ordinance (Chapter 253 of the Municipal Code of the City of Rehoboth Beach).

This appeal hearing has been requested by Phillip A. Jackson, owner of American Tree Care LLC on behalf of , pursuant to Section 253-36 of the Municipal Code of the City of Rehoboth Beach, and pertaining to the denial of a request to remove two (2) trees.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) The trees are healthy and not a material safety hazard to the structures. The tree at 26 Christian Street is the only tree in the front yard. The contractor was allowed to prune the tree as necessary. The tree permit was denied because it did not meet the requirements of Section 253-30(A)(2)(a) of the Code.

Mr. Phillip A. Jackson, owner of American Tree Care LLC, provided testimony on behalf of Ann K. Walls McCool Trust, owner of the property, that there are approximately 30 trees on the property. The owner had a problem with wind damage, and she had contacted her insurance agent. Mr. Jackson, the owner and insurance agent reviewed the matter. It was determined that the liability could be as high as \$15,000.00 to \$20,000.00 depending on the value of the property. There are numerous homes on the property. Mr. Jackson looked at the trees and determined which trees seemed to be structurally sound. For those trees, permission was granted to prune them. The problem with the small mulberry tree on Christian Street is that there is a service line going through it. In the past, the same service line has been broken by branches on that tree. The City does not allow for trees to be topped off. The type of pruning allowed would not make a difference with regard to service line. The concern is that this service line could break again and cause fire. He strongly recommended that the tree be removed for the hazards which he had stated. Mr. Jackson did not think that the owner would have a problem, if required, to plant another tree some place on the property. He did not see why that would be required because there are numerous on the property. This tree will not make a difference in the beautification of the City or in the air which is breathed. With regard to the silver poplar tree, the trunk splits and a limb goes over the top of the roof of the home. The limb could be cut off; but because of the size of the limb and the age of the tree, the wound to the tree would not close over. This would make it hazardous because all the weight would be protruding out over a busy intersection. The internal structure of a tree weakens as it ages and causes risk and liability to increase.

There was no correspondence and no public comment.

Mr. Kesmodel noted that the mulberry tree on Christian Street is located where it interferes with the installation, deliver or maintenance of proposed utility service to the lot; and relocation of such a service is not reasonable. The silver poplar tree is located where it creates a material safety or health hazard or nuisance with respect to existing or proposed structures or vehicles. All Commission members concurred.

Ms. Marcia Maldeis made a motion, seconded by Ms. Jane Wyatt, based upon the testimony given and documents submitted, that as to the mulberry tree the Commission will grant the permit to remove the tree based upon Section 253-30(A)(2)(a)(5) due to the utility line passing through the tree; and to the silver poplar tree the Commission will grant the permit to remove the tree based upon Section 253-30(A)(2)(a)(4) because it creates a material safety or health hazard or nuisance with respect to existing or proposed structures. (Kesmodel – aye. Maldeis – aye. Smith – aye. Wyatt – aye. Hubbard – aye.) Motion carried unanimously.

The City Arborist will issue the tree removal permit on May 16, 2012.

This appeal hearing has been requested by Mary Ellen Anderson, owner of the property located at 54 Olive Avenue pursuant to Section 253-36 of the Municipal Code of the City of Rehoboth Beach, and pertaining to the requirement to plant a tree to replace the removed specimen tree.

City Solicitor Mandalas noted that Ms. Mary Ellen Anderson requested the Commission be informed that she would not be present for the appeal hearing today.

Building Inspector Sullivan said that Ms. Anderson received the permit to remove the tree but with the understanding that she was going to do her driveway and the City has changed its policy since then. No building permit was issued for the driveway, but the tree was removed anyway.

This appeal was postponed to a later date to be determined when Ms. Anderson would be available.

This appeal hearing has been requested by Anthony Forand, owner of Premier Developers LLC on behalf of Philip & Kimberly Kemp of Waterside Properties, owner of the property located 33A Virginia Avenue pursuant to Section 253-36 of the Municipal Code of the City of Rehoboth Beach, and pertaining to the denial of a request to remove one (1) tree.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) The elm tree located on the side facing First Street is a specimen tree, is not in the buildable area and is not diseased. The contractor was allowed to prune the tree as necessary and was required to protect the tree during construction. The tree permit was denied because it did not meet the requirements of Section 253-30(A)(2)(a) of the Code.

Mr. Anthony Forand, owner of Premier Developers LLC, provided testimony on behalf of Mr. Philip & Mrs. Kimberly Kemp of Waterside Properties, owner of the property. The elm tree is starting to rot in the crotch of the tree, and there is considerable leakage. The owners are concerned that if the tree is to split towards the roadway, it could be a safety hazard for the public and transportation. If the tree would split the other way, it could fall into their house. The owners propose to put four trees on the condominium site and eight trees on City property. The owners' concern is for the safety of the house and the residents and guests of the house. There is no way to properly prune the tree at this point in time. The ivy could be taken out. Five new trees have been planted on the property.

Mr. Kesmodel would like an arborist look at the tree and give the Commission a report on the condition of the tree and if it would be a danger to the house or the public. Ms. Maldeis agreed.

Ms. Wyatt noted that the tree was never pruned properly by an arborist.

Ms. Sullivan said that with regard to placing trees on City property, approval is needed from the City Manager, and the trees have to be located within the same watershed. The eight trees would not count towards the density requirements for the subject property. There are enough trees on the property to meeting the density requirement. By denying the permit, the City Arborist has said that it is a healthy tree.

City Solicitor Mandalas noted that the elm tree is a specimen tree. There are special rules that apply when a specimen tree is taken down. The amount of caliper of the elm tree would have to be replaced, but existing caliper can be used on the property to mitigate. If the density requirement is met and there are additional trees planted that would cover the inches of caliper, then there would not be a requirement to plant any additional trees. In this case, there is not another 36 inches of caliper, so the fact that a proposal has been presented to add additional caliper will bring it back up to the 36 inches of caliper.

There was no correspondence and no public comment.

Ms. Jane Wyatt made a motion, seconded by Ms. Anne Hubbard, to allow elm tree to be removed because of the diseased part of it; the tree is too big for the lot, it has been extremely poorly pruned and it hangs over the street.

City Solicitor Mandalas noted that Ms. Wyatt was using Section 253-30(A)(2)(4) which is that the tree creates or will create a material safety or health hazard or nuisance with respect to existing or proposed structures, and Section 253-30(A)(2)(6) which is that the tree is determined by the City to be dead, significantly diseased, severely injured or in nature of falling.

(Kesmodel – aye. Maldeis – no for having the tree taken down because she will be siding with the City Arborist. Smith – aye. Wyatt – aye. Hubbard – aye.) Motion carried.

The City Arborist will issue the tree removal permit on May 16, 2012.

There being no further business, Ms. Priscilla Smith adjourned the meeting at 2:43 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JULY 30, 2012**

(Priscilla Smith, Chair)