

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

July 30, 2012

The Parks and Shade Tree Commission Meeting was called to order at 2:04 p.m. by Chair Priscilla Smith on Monday, July 30, 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.

APPROVAL OF MINUTES

Minutes of the May 15, 2012 Parks and Shade Tree Commission meeting were distributed prior to the meeting.

Ms. Marcia Maldeis made a motion, seconded by Mr. Ned Kesmodel, to approve the minutes of the May 15, 2012 Parks and Shade Tree Commission as written. Motion carried unanimously.

Ms. Maldeis noted that her husband, Mr. Stan Mills, sits on the Board of Commissioners, and she is not influenced by that in making her decisions.

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 Abram & Andrea Hoffman of 137 Henlopen Avenue, pursuant to Section 253-36 of the Municipal Code of the City of Rehoboth Beach, to permanently reverse the Building Inspector's decision on the amended March 13, 2012 Tree Removal Permit for the property located at 141 Henlopen Avenue. The owners of the property are Richard & Caryl Raport. City Solicitor Mandalas noted that this appeal has been made by an adjacent neighbor on whether the tree removal permit was properly or improperly issued by the building official. He presented the procedures for this hearing.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) On March 23, 2012, a tree removal permit was issued to remove two (2) trees in order to facilitate the demolition of the existing house. The trees were removed, and the house was demolished. On May 3, 2012, a tree removal permit was issued to remove seven (7) trees that were within the building envelope of the proposed home. Six trees were removed. On May 26, 2012, the owners of the adjacent property applied to the Commission to stop the removal of a 24" oak tree that had originally been approved for removal. The tree is located approximately two feet from the property line. The tree would be approximately 2'-6" from the roof overhang of the proposed house. The roots of the tree were compromised when the basement was removed from the home that was demolished. The root system will be further compromised when the proposed basement is under construction. Ms. Sullivan and the City Arborist have determined that by saving this tree, the safety of the owners of both 141 and 137 Henlopen Avenue would be jeopardized due to the tree being structurally unsound. If the tree would be allowed to remain, it would be a material safety hazard because of the proximity from the trunk of the tree to the roof. The owner is required to plant eight (8) deciduous trees to mitigate the loss of the trees that have been removed. Those trees will be required to be 3" caliper and 12 feet tall at the time the trees are planted. Two trees would be planted on the property, and six trees would be planted elsewhere in the City. Ms. Sullivan also provided an informational sheet on avoiding tree damage during construction.

Exhibits:

1. Letter dated June 20, 2012 and received June 25, 2012 from Kyle Hoyd recommending that the

- tree should be removed to alleviate a future hazard as well as issues for the property owners and surrounding residents.
2. Letter dated July 26, 2012 and received July 26, 2012 from Jeff Meredith, Certified Arborist of Sussex Tree read that he had assessed the tree. Digging a basement close to root structure would impact the root structure and would lead to tree failure at some point. It is imperative that this tree be removed prior to building the proposed home.
 3. Letter dated July 1, 2012 and received July 2, 2012 from William Downs of DGM Inc. read that the estimated cost to remove the tree in question prior to building a new home would be \$500.00. Excavation of the proposed basement would likely result in the death of the tree. Removing the tree after the basement and home are constructed would cause an increase in liability and an additional cost of bringing in a crane to ensure the safety of the workers and property damage. That cost would be \$3,500.00.

Mr. Abram Hoffman, owner of the adjacent property at 137 Henlopen Avenue gave his presentation and provided testimony on the chronological events leading to the appeal and on why the tree removal permits were improperly issued by the building official. He requested that the Parks & Shade Tree Commission rule that Building & Licensing incorrectly gave permission for one or more trees to be cut down. The focus of his presentation was on illegal procedure and illegal results that occurred. There was a failure to follow the requirements of the tree ordinance. He noted that there was a lack of permits being posted and trees being indicated as to whether they were to be protected or slated for being cut down. The appeal was filed because something was wrong with how the tree ordinance was being interpreted. Mr. Hoffman stated that procedural errors denied the public with transparency and denied the public the basic right to know what its government is doing and to know what its government is authorizing other people to do. Procedural errors also denied the Appellants their due process rights and should have been respected. Saving some of the trees would not have diminished the Raports ability to build a house that they wanted. Failure to follow the requirements of the tree ordinance caused several trees in setback areas to be cut down. Mr. Hoffman asked that if any further tree cutting is planned that proper procedure should be followed.

This appeals hearing was recessed at 2:41 p.m. and reconvened at 2:45 p.m.

Mr. Hoffman reviewed the documents in his powerpoint presentation which were provided by Building & Licensing. Mr. Hoffman also reviewed what he thought were discrepancies in the documents and procedures.

Witness for the Appellant

1. Mr. Harvey Shulman, 149B Henlopen Avenue, provided testimony that there was a substantial clearing of trees on the lot. He had taken three pictures of the property. Mr. Shulman noted that there was no permit posted for the demolition, construction, tree removal, etc. There was no danger with the tree in question to the house because the house had been demolished. He had spoken with the Building Inspector with regard to the cutting down of the trees and procedural issues such why no permits were posted on the property, tree protection, etc. There is a problem with how the City Arborist is applying the tree ordinance. He referred to several sections of the tree ordinance, and questioned whether all reasonable efforts were made to save the trees.

Mr. Hoffman summarized that reasonable efforts were not taken to save trees with the granting of the tree permits, tree protection, etc. In his presentation, Mr. Hoffman provided relevant tree ordinance sections and the violations indicated by action/inaction, records/lack of records, etc. He requested that the Parks and Shade Tree Commission rule on whether the trees were cut down with authority or not. In regard to mitigation, Mr. Hoffman recommended that more than 3" caliper be considered to maximize the replacement canopy. The type and size of the trees should be considered. The tree ordinance is very clear on the point of how many inches in caliper are credited. The range would be to plant eight to 12 trees at 3" diameter, assuming there is a fourth tree to receive credit. Mr. Hoffman presented a copy of the site plan of the property showing the trees to be removed, and he suggested that the basement could be smaller or relocated and the design of the house could be altered with regard to saving the tree. Mr. Hoffman did not have an arborist look at the tree.

2. Mr. Moroni of Superior Foundation Inc provided his expertise in excavation and explained excavation methods that could be used in order to save the tree.

Mr. Richard Raport, owner of the 141 Henlopen property, noted that the tree is a danger. A tree mitigation plan had been made and was agreed to change the mitigation now would be a retroactive flaw. Mr. Raport noted that Mr. Hoffman had never personally posed his issues in order for them to be addressed, and many of the facts that Mr. Hoffman had mentioned were incorrect.

Mr. Jim MacGregor said that there was talk of mitigation by planting the trees that would not fit on the Raport's property by planting them on the Hoffman property. Ms. Sullivan noted that Mrs. Hoffman had mentioned to her that they would be willing to accept trees on their property if not all of them could be planted on the Raport's property.

Ms. Sullivan provided additional testimony with regard to questions on procedures which had been raised by Mr. Hoffman. She also confirmed the trees to be mitigated which are specimen trees. The total trees required would be seven trees.

Correspondence

1. Email dated July 24, 2012 and received July 25, 2012 from Robert A. Streimer, 153 Henlopen Avenue – in support of the original decision of the Building & Licensing Department.
2. Letter received July 27, 2012 from Elise and Tim Burns, 130 Henlopen Avenue – in support of the tree being removed.
3. Letter received June 26, 2012 from Tom Helinski & Robert W. Miller, 143 Henlopen Avenue – in support of the tree being removed.
4. Letter received July 30, 2012 from Elise and Tim Burns, 130 Henlopen Avenue – in support of the tree being removed.
5. Letter received July 30, 2012 from Harry Tisdale, address unknown – in support of the tree being removed.
6. Letter received July 30, 2012 from Robert Streimer, 153 Henlopen Avenue – in support of the tree being removed.

Public Comment:

1. Mr. Tim Spies, 53 Columbia Avenue, recommended that the one remaining tree should be saved.
2. Ms. Elizabeth Groven, Hickman Street, supported Mr. Spies on his recommendation that the one remaining tree should be saved, and that there needs to be clarification of the tree ordinance.
3. Mr. John Stolson, 155 Henlopen Avenue, asked if a check had been submitted for \$250.00 for the appeal hearing. Ms. Ann Womack, City Secretary, verified that it had been received.

Ms. Smith closed the record.

Ms. Maldeis made a motion, seconded by Mr. Kesmodel, to affirm the decision of the Building Inspector as to all aspects of this case which would be for both tree removal permits that were issued and the mitigation calculation of eight trees the Building Inspector arrived at. (Kesmodel – aye. Ms. Sullivan followed the rules and regulations of the tree ordinance, and followed the law of the ordinance. Maldeis – aye. Ms. Sullivan did an outstanding job. Not everyone who moves here has real deep pockets, so making people go above and beyond to save a tree is a bit too much; and if they replace with eight more trees in 50 years it will look really nice. Smith – aye. Ms. Sullivan did the right thing, and everything is in proper order. The tree needs to come down. Wyatt – aye. Ms. Sullivan looked at all the options, She would go with the opinions of the arborist, Mr. Jeff Meredith and the State Forester. Hubbard – aye. She knows what happens to trees when a building is done next to them. It is not a specimen tree.) Motion carried unanimously.

All members supported the finding that the tree is located where it creates or will create a material safety or health hazard or nuisance with respect to existing proposed structures or vehicles or pedestrian routes.

The stop work order was released, and the tree removal permit is valid to remove the tree.

This appeal hearing has been requested by Joe Hallock of Joe Hallock Contracting LLC on behalf of Robert Green of 312 LLC, owner of the property located at 312 Country Club Drive 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 trees.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) The tree removal permit was denied based on Section 253-30A)(2)(a) which reads that no tree removal permit shall be issued unless the City find that at least one criteria is satisfied with respect to each protected tree designated for removal. The property owners are installing a new driveway and discovered the root system of the tree was pushing up the existing concrete driveway. The two trees are healthy and are the only trees in the front yard. There is a flexible paver that could be used which would both protect the root structure and allow the new driveway to be installed without damaging the tree.

Mr. Bob Green, owner of the property, stated that the concrete driveway was displaced by four inches by the

tree roots. Some concrete was removed closest to the house in order to pour the concrete footers for the new front porch. He is willing to replace the trees through mitigation and is prepared to plant other trees in the front yard. There is a standard for weight-bearing driveways, and it requires stone and sand. Anything that is in the way of where the pavers will be located needs to be removed.

Mr. Steven Daddona, Certified Arborist of Complete Tree Care, said that there is no way to remove the roots and save the tree. There is potential that the sidewalk and curbing will be affected by the root system. The trees pose a liability and risk and are in a state of failure.

Public Comment:

1. Mr. Michael J. Kelley, 310 Country Club, voiced concerned about roots and if the tree would come down. He was in support of the trees being taken down and mitigated with something else.

There was no correspondence.

Mr. Kesmodel made a motion, seconded by Ms. Maldeis, to allow the trees to be removed at 312 Country Club Drive because the tree is located where it creates or will create a material safety hazards or nuisance with respect to existing or proposed structures and is located where there is installation, delivery or maintenance of proposed or existing utility services, and the mitigation will be referred to the Building & Licensing office to be calculated for both trees. (Kesmodel – aye, for the two reasons stated. Maldeis – aye, for the two reasons stated. Smith – aye, for the two reasons stated. Wyatt – aye, for the two reasons stated. Hubbard – aye, for the two reasons stated.) Motion carried unanimously.

The City Arborist will issue the tree removal permit on July 31, 2012.

Chair Smith called to consider the establishment of a monthly standing date for the purpose of conducting appeal hearings and any other business of the Commission.

Ms. Maldeis made a motion, seconded by Ms. Jane Wyatt that the standing date would be the fourth Monday of each month at 2:00 p.m.

There being no further business, Ms. Maldeis made a motion, seconded by Ms. Wyatt to adjourn the meeting at 5:33 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
NOVEMBER 26, 2012**

(Priscilla Smith, Chair)