

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

**November 26, 2012**

The Parks and Shade Tree Commission Meeting was called to order at 2:04 p.m. by Chair Priscilla Smith on Monday, November 26, 2012 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Mr. Ned Kesmodel  
Chair Priscilla Smith  
Ms. Jane Wyatt

Absent: Ms. Marcia Maldeis  
Ms. Anne Hubbard

Also present: City Solicitor Glenn Mandalas  
Building Inspector Terri Sullivan  
City Arborist Walter Onizuk

A quorum was present.

**CORRESPONDENCE**

There was none.

**APPROVAL OF MINUTES**

Minutes of the July 30, 2012 and October 22, 2012 Parks and Shade Tree Commission Meetings were distributed prior to the meeting.

Ms. Jane Wyatt made a motion, seconded by Mr. Ned Kesmodel, to approve the minutes of the July 30, 2012 Parks and Shade Tree Commission as written. Motion carried unanimously.

Ms. Wyatt made a motion, seconded by Mr. Kesmodel, to approve the minutes of the October 22, 2012 Parks and Shade Tree Commission as written. Motion carried unanimously.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

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 Ms. 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, pertaining to the requirement to plant a tree to replace a removed specimen tree.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) On November 25, 2008, a request was made to remove a 24" willow oak tree at 54 Olive Avenue. The owner planned to expand the driveway, and a note was placed on the permit that a willow oak was to be planted in the front yard after the expansion was completed. The tree permit was approved because the tree would have been in the way of the new construction of the driveway. Ms. Mary Ellen Anderson never submitted plans for the expansion of her driveway. When a protected tree, other than those specified in Section 253-28(A)(1)(c), that is at least 24" in caliper is to be removed pursuant to a tree removal permit, such permit shall not be issued unless the City Arborist approves a mitigation plan. Any replacement trees which are the subject of such mitigation shall be planted, relocated or preserved before the issuance of the final development approval or certificate of occupancy. Currently, the requirements for tree removal and a permit must be issued for construction prior to the tree removal permit being issued, if that is the only reason to remove the tree. Ms. Anderson chose not to plant a new tree as required by the tree removal permit. Mr. Onizuk, Ms. Anderson, Mr. Bob Hughes and Ms. Sullivan met onsite to discuss

the reasons why she did not think she needed to replace the tree. An option was offered to Ms. Anderson to plant the tree in the City Park across from her property if she did not want the tree on her property.

Ms. Mary Ellen Anderson gave her testimony in opposition to the Building Inspector's report. She disputed the tree removal permit dated November 26, 2008. A copy of the permit was only given to her on November 4, 2011. Ms. Anderson confirmed that she had requested the tree to be removed for a variety of reasons: 1. The tree was popping the pavers in the driveway that had been installed. 2. The tree was not in good condition. 3. She wanted to expand the driveway. On November 24, 2008, Mr. Bob Hughes, Mr. Walter Onizuk, Mr. Steve Kordek and Ms. Anderson met onsite prior to the willow oak tree removal. Photographs were provided to Ms. Ann Womack, City Secretary, in January 2012 and were distributed to the Commission prior to the meeting. The willow oak tree was damaged by lightning, and it created an impediment to pedestrians' safety and interfered with traffic. Ms. Anderson felt that the tree was located where it would create a material safety or health hazard or nuisance with respect to existing or proposed structure or vehicles or pedestrians. With regard to the willow oak tree, the size, condition and type did not meet the requirements of a specimen tree and the caliper. Ms. Anderson noted that she had not been told of the requirement to replace the tree on the day of the visit. Currently, she has seven trees that are at least 15 feet tall; and included in the count is a crepe myrtle and a holly. Mr. Bob Hughes got the permit. The permit was not posted, and she never received the permit at that time. Ms. Anderson was given a copy of the permit three years after it was originally issued. The tree was justifiably removed, and it was not a specimen tree. She requested that the fee be waived because the tree was damaged.

City Solicitor Mandalas interjected. The permit says that a new willow oak tree shall be planted based on the permit. He noted that there seems to be sufficient trees on the property, and those trees can be counted towards density, etc. There would not be any mitigation requirement if the tree was not a specimen tree. If the tree was a specimen tree, then the Building & Licensing office had a right, under the Code, to implement a mitigation plan. This case is about whether or not the tree was a specimen tree.

Public Comment:

1. Ms. Beatrice Wagner, Scarborough Avenue Extended, questioned the time lapse for the hearing.

Ms. Wyatt noted that this case was placed on a prior agenda, but Ms. Anderson was unable to attend the meeting.

Ms. Anderson said that the notice was posted prior to her committing to the date of the hearing. Ms. Anderson thought that she had not committed to a prior date for the hearing.

Ms. Sullivan noted that Ms. Womack had received several dates from Ms. Anderson as to when she could attend the hearing. Ms. Womack use one of those dates and sent out the notice. Ms. Anderson received the notice at the same time everyone else had.

Chair Priscilla Smith closed the public portion of the hearing.

There was consensus that the willow oak tree was a specimen tree, and a good solution as to the planting of a new tree was to plant it on City property.

Ms. Anderson had offered to Ms. Marcia Maldeis to plant a tree on City property if the dead tree across the street from Ms. Anderson's property would be removed from the City property.

Mr. Kesmodel made a motion, seconded by Ms. Wyatt, to uphold the City's opinion that the willow oak tree was a specimen tree, and Ms. Anderson should the mitigation that the City has asked her to do.

There was question as to what the mitigation was.

Mr. Kesmodel withdrew the motion.

Ms. Sullivan noted that the mitigation proposal was that Ms. Anderson plant one tree on her property, and Ms. Anderson had said that it would be a willow oak tree. In November 2011, Ms. Sullivan had told Ms. Anderson that the Building & Licensing office would accept a tree being planted on City property at the park across from her property instead of on her property, if she chose to do that. Ms. Anderson said that she had not heard that.

Mr. Kesmodel made a motion, seconded by Ms. Wyatt, to affirm the City's opinion that it was a specimen tree, requiring mitigation of one willow oak tree, at least the minimum requirement provided

under the Code, and that may be planted either on Ms. Anderson's property or on City property. (Wyatt – aye, Kesmodel – aye, Smith – aye.) Motion carried unanimously.

Appeal hearing has been requested by Michael Palmer and Robert Diehl, owners of the property located at 333 Laurel Street pursuant to Section 253-36 of the Municipal Code, pertaining to the denial of a request to remove eleven (11) trees.

Building Inspector Terri Sullivan read her report which had been distributed with exhibits prior to the meeting. (Copy attached.) On August 24, 2012, Mr. Tim Cisco of Cisco Tree Service applied for a permit to remove nine hemlocks on the left side and one cedar on the back right side of the 333 Laurel Street property. The tree permit was denied on September 21, 2012 based on Section 253-30(A)(2)(a). No tree removal permit shall be issued unless the City finds that at least one of the criteria is satisfied with respect to each protected tree designated for removal. Mr. Walter Onizuk went to the site and determined that the trees were healthy, but that some of the hemlocks could be removed to allow the others the space they would need to grow properly. The owners had not mentioned removal of the driveway and had not applied for a permit to remove the driveway. To date, there has been no application for a new driveway. The City finds that none of the reasons listed in Section 253-30(A)(2)(a) apply to this property.

Mr. Michael Palmer gave his testimony in opposition to the Building Inspector's report. Mr. Palmer noted that he and Mr. Robert Diehl had not been notified about some of the trees to be removed for spacing. There are ten hemlock trees and one cedar. The trees are not healthy, not maintained properly, planted too close to each other and are located very close to the cement pad. The trees have raised up part of the driveway so that water drains towards house. With regard to the photographs, the hemlocks are not specimen trees. They are planted too close together and too close to the driveway. The cedar tree is growing into a pine tree. Mr. Palmer had no problem with planting additional trees on the property. He suggested planting one large tree with shrubbery and an additional tree at the front of the property, if needed. There would be eight trees remaining on the property if the eleven trees would be removed.

Mr. Kesmodel thought that Reason No. 4 in Section 253-30(A)(2)(a) was the best reason because the trees are diseased or dying.

Chair Smith closed the public portion of the hearing.

Ms. Wyatt made a motion, seconded by Mr. Kesmodel, to allow the ten hemlock trees and one cedar tree to be take down on the basis of Section 253-30(A)(2)(a)(4), trees located where it creates a material safety or health hazard or nuisance with respect to existing or proposed structures, vehicles or pedestrians.

Mr. Kesmodel did not think that mitigation was required.

Ms. Sullivan noted that four pine trees, three holly trees and one maple tree will remain on the property. Mr Onizuk acknowledged that there would be enough caliper remaining, and the remaining trees would meet the minimum density requirement.

(Wyatt – aye, Kesmodel – aye, Smith – aye.) Motion carried unanimously. No mitigation was required.

## **OTHER BUSINES**

There was none.

There being no further business, Chair Priscilla Smith adjourned the meeting at 3:22 p.m.

**Respectfully submitted,**

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(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON  
APRIL 22, 2013**

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(Priscilla Smith, Chair)