



AGENDA ITEM 6

MEMORANDUM

DATE: June 1, 2010

TO: Planning and Zoning Board

FROM: Steve Schield, ASLA, AICP, Planner 

THROUGH: Monica Simpson, Planning, Zoning and Building Director 

RE: Ordinance 2010-23, Chapter 98: Trees

At the January 19, 2010, meeting, the Planning and Zoning Board requested that the Town Commission appoint a joint Tree Code Subcommittee to explore the outstanding issues with the draft revised code. The Town Commission appointed a subcommittee, which included Vice-Mayor Jim Brown, Commissioner Lynn Larson, and Planning and Zoning Board members Patricia Zunz, Allen Hixon, and Phineas Alpers. The subcommittee, chaired by Patricia Zunz met on April 12, 2010, and reviewed all of the remaining policy changes. Chair Zunz presented the subcommittee recommendation to the Town Commission at their regular meeting on May 3, 2010. The Town Commission reached consensus to forward the revised trees code, incorporating the subcommittee's recommended changes, to the Planning and Zoning Board for their consideration and recommendation.

The Tree Code Subcommittee discussed the national trimming standard referenced within the proposed tree code, and if a state standard should be used. Staff researched the issue, and according to the State of Florida Extension Office, an independent state trimming standard does not exist. They produce trimming guideline materials based on the national standard. The national trimming standard includes recommended trimming practices for palm trees. At the recommendation of the Subcommittee, staff also researched the inclusion of Grand Tree protection in the proposed trees code. The Grand Tree standards used in other jurisdictions would be difficult to apply to the island trees, which tend to be shorter, and have a smaller canopy. Grand Trees would already be protected in the proposed code on all property except improved single-family lots, and the decision was made by the Subcommittee to not include improved single-family lots in tree protection.

At this time, the Planning and Zoning Board may **recommend approval, recommend approval with changes, or direct staff to revise the proposed ordinance.**

attachments: Draft Ordinance 2010-23, Trees Code - May 20, 2010
Zunz memo to St. Denis - April 25, 2010
Tree Code Subcommittee Minutes - April 12, 2010
Webb memo to Rothenberg - February 10, 2010
Planning and Zoning Board Minutes - January 19, 2010

ORDINANCE 2010-23

AN ORDINANCE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 98, *TREES*, TO DELETE SECTIONS 98.01 THROUGH 98.12 AND ADDING SECTION 98.01, *INTENT*; SECTION 98.02, *DEFINITIONS*; SECTION 98.03, *MANGROVE TRIMMING OR REMOVAL*; SECTION 98.04, *TRIMMING OF TREES OTHER THAN MANGROVES*; SECTION 98.05, *EXEMPTION FOR IMPROVED SINGLE-FAMILY LOTS*; SECTION 98.06, *PERMITS FOR TREE REMOVAL*; SECTION 98.07, *PROTECTION OF TREES DURING SITE DEVELOPMENT*; SECTION 98.08, *PROHIBITED PLANTINGS, REMOVAL OF NUISANCE EXOTIC SPECIES, PROTECTION OF UTILITY FACILITIES*; SECTION 98.09, *PUBLIC EDUCATION*; SECTION 98.10 *PETITION FOR REVIEW*; SECTION 98.11 *PENALTY*; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Longboat Key is a place of exceptional natural beauty, which is an important reason people enjoy living, visiting, and working on the island; and

WHEREAS, the residents of Longboat Key have historically enjoyed a rich natural environment including clean air and water, abundant bird life, and lush landscaping; and

WHEREAS, trees and other plantings make a significant contribution to our perception of the beauty of Longboat Key and to the ecological health of our environment; and

WHEREAS, it is a matter of public policy that the health, safety, welfare, and economic well-being of the residents and property owners of Longboat Key is served by the protection of trees and this ordinance increases that protection; and

WHEREAS, the Town commission formed a subcommittee with the Planning and Zoning Board to hold public hearings on the topic; and

WHEREAS, the Tree Code subcommittee made a recommendation for changes to the Trees Code to the Planning and Zoning Board; and

WHEREAS, pursuant to Town Code Section 158.030(B), the Planning and Zoning Board, as the local land planning agency, considered the subject code amendment at its regular meeting of September 21, 2010; and

WHEREAS, the Planning and Zoning Board determined that the public would benefit from minor changes and simplification of the Trees Code; and

WHEREAS, the Planning and Zoning Board finds that these amendments to the Tree code are consistent with the Town of Longboat Key Comprehensive Plan; and

WHEREAS, at a duly noticed public hearing, the Planning and Zoning Board voted to recommend that the Town Commission approve this Code amendment; and

WHEREAS, the Town Commission of the Town of Longboat Key finds that the proposed code amendments are in the best interest of the Town and consistent with the Town's comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA THAT:

SECTION 1. The WHEREAS clauses above are ratified and confirmed as true and correct.

SECTION 2. Chapter 98, *Trees*, is hereby amended by deleting sections 98.01 through 98.12 and inserting in its place the following:

98.01 Intent.

The protection of trees within the Town of Longboat Key is desirable and essential to the present and future health, safety and welfare of the citizens of Longboat Key. It is the intent of this code to protect existing trees, encourage the planting of trees other than trees that are nuisances, and to maintain and enhance tree canopy within the Town. All properties within the Town are subject to the regulations contained within this chapter.

98.02 Definitions.

"TREE." Any living, self-supporting woody plant having a diameter of four inches or more when measured four and one-half feet above ground level, and which will typically reach ten feet or more in height. For the purpose of this chapter, all species of mangroves, and all palms with four and one-half feet of clear trunk when measured from ground level are declared to be trees and are protected by the provisions of this chapter.

"TREE REMOVAL." To relocate or, cut down, damage, or poison or in any other manner destroy, or cause to be destroyed, a tree as defined in this chapter.

"DRIP LINE." The peripheral limits of horizontal crown spread projected vertically to the ground.

"IMPROVED SINGLE-FAMILY LOT." A lot zoned for single-family use containing an existing single dwelling unit.

"MATURE REPLACEMENT TREE." A tree with a diameter of two inches or more measured four and one-half feet above ground level, at least 10 feet in height from ground level when planted, and with a height of at least 25 feet with a canopy spread of at least 20 feet at maturity. Three 10-foot tall palm trees grouped to create a canopy of not less than 15 feet may be substituted for one mature replacement tree.

98.03 Mangrove trimming or removal.

(A) Mangrove trimming requires a state permit and shall be in accordance with the laws of the State of Florida; no additional local permit is required for Mangrove trimming.

(B) Mangroves cannot be removed unless a permit is obtained from the appropriate state agencies and the Town as set forth below.

98.04 Trimming of trees other than mangroves.

All trimming of trees shall conform to American National Standards Institute (ANSI) A300 Standards-1995 or the most recent edition. In the Town of Longboat Key Arborists, Landscape Architects, or other licensed professionals are not required to write standards, inspect or administer tree trimming unless required by state or federal agencies.

98.05 Exemption for improved single-family lots.

Improved single-family lots are exempt from the tree removal permit provisions as set forth in Section 98.06, but not from the regulations for protected tree species under state or federal law.

98.06 Permits for tree removal or relocation.

Tree removal or relocation is prohibited unless the Town Manager or his designee has issued a tree permit based upon the requirements of this chapter.

(A) Review and approval procedure. A tree permit may be issued if the Town Manager finds that any one of the following conditions applies.

- (1) The condition of the tree has significantly degraded or deteriorated because of disease or insect attack and is in danger of falling within the proximity of existing or proposed structures;
- (2) The applicant cannot practically alter or revise the proposed development or improvement under all applicable laws and regulations to accommodate existing trees, including the tree or trees proposed to be impacted;
- (3) Removal of the tree will enhance the ultimate tree canopy and removal will not result in erosion, or adversely effect the flow of surface waters; or
- (4) The tree poses a significant safety hazard to life or property.

(B) Applications for tree removal or relocation shall provide a site plan including the shape and dimensions of the lot, together with existing and proposed driveways, structures, and improvements. The plan shall indicate the location, type, species, and size of existing trees and shall include:

- (1) Those trees requested to be removed or relocated.
- (2) A statement explaining why the trees are requested to be removed or relocated.
- (3) A statement explaining how any remaining trees or trees proposed to be relocated are to be protected during construction.
- (4) Any other material or information deemed necessary in reviewing the criteria as set out in subsection (A).

(C) Fees. The application fee for tree removal is \$50.00. This fee may be modified by Resolution of the Town Commission. Additional costs, including staff time, may be incurred as necessary depending on the scope and complexity of the project.

(D) Permit conditions for tree removal, replacement or relocation.

(1) Generally two mature replacement trees will be required for the removal of each tree; the site, size, and species of the trees being removed will be considered when determining the actual tree replacement ratio.

(2) Where feasible the applicant shall be required to relocate, rather than remove, the tree. Relocation shall depend upon the size, condition, and species of the tree to be relocated, as well as whether survival of the relocated tree may be reasonably anticipated. Replacement trees are not required for relocated trees.

(3) The applicant will be required to relocate or replace a tree being removed, at the applicant's expense, on the site, or with the concurrence of the Town, on public land.

(4) When mature replacement trees cannot be planted on the applicant's land, or on public land, or relocation is not feasible, a tree replacement fee of \$300 per mature replacement tree, shall be paid to the Town. These funds shall be kept in an account and used only for the designated replacement or planting of trees on public property.

98.07 Protection of trees during site development.

(A) Prior to land development, all trees shall be clearly marked to indicate which trees are permitted for removal and barriers shall be erected for the protection of the trees to be preserved using best management practices approved by Town staff.

(B) Silt screens shall be required where mangroves or wetlands could be affected by construction or runoff from construction.

(C) A performance bond may be required for the restoration or replacement of any preserved trees on the site, which have been adversely affected by construction activities, as determined by the Town.

98.08 Prohibited plantings; removal of nuisance exotic species; protection of utility facilities.

(A) It is unlawful to plant, transplant, or grow from seed any nuisance exotic plant species listed below, and these species are exempt from permits for tree removal.

- (1) *Schinus terebinthifolius* (Brazilian Pepper Tree)
- (2) *Melaleuca quinquenervia* (Punk Tree)
- (3) *Enterolobium cyclocarpum* (Ear Tree)
- (4) *Melia azedarach* (Chinaberry Tree)
- (5) *Ficus retusa* (Cuban Laurel)
- (6) *Grevillea robusta* (Silk Oak)
- (7) All *Eucalyptus*, except *E. cinera* (Silver Dollar Tree)
- (8) *Ficus aurea* (Strangler Fig)
- (9) *Dalbergia sissoo* (India Rosewood)
- (10) *Casuarina* (Australian Pine)
- (11) *Cupaniopsis anacardioides* (Carrotwood)

(B) Protection of electric facilities. No tree shall be planted where at mature height it may conflict with overhead electric facilities.

(1) Large trees (trees with a mature height of 30 feet or more) shall be planted no closer than a horizontal distance of 30 feet from any overhead electric facility.

(2) Medium trees (trees with a mature height of 20 to 30 feet) shall be planted no closer than a horizontal distance of 20 feet from any overhead electric facility.

(3) Palm trees shall be planted no closer than three feet from the mature maximum frond length from any overhead electric facility.

(C) The Florida Department of Transportation, municipal utilities, and public utilities may remove trees without a permit when they endanger public safety and welfare and are located within utility easements and public rights-of-way or are interfering with utility service.

(D) Removal of nuisance exotic species. The Town shall require the removal of all trees in the genus *Casuarina* (Australian Pine), *Schinus terebinthifolius* (Brazilian Pepper Tree) and *Cupaniopsis anacardioides* (Carrotwood) from all real property being prepared for development or redevelopment, including single-family lots.

98.09 Public education.

(A) The following native trees are specifically recommended as replacement trees. However, other native and non-native trees may be appropriate as replacements for the island environment; therefore, this list is not all inclusive.

Name	Height	Growth Rate	Salt Tolerant	Cold Hardy
Mahogany (<i>Swietenia mahogany</i>)	35'	Fast	High	Low
Sea Grape (<i>Coccoloba uvifera</i>)	30'	Moderate	High	Low
Live Oak (<i>Quercus virginiana</i>)	70'	Moderate	High	High
Gumbo Limbo (<i>Bursera simaruba</i>)	60'	Fast	High	Low
Southern Magnolia (<i>Magnolia grandiflora</i>)	50'	Slow	Moderate	High
Red Bay (<i>Persea borbonia</i>)	35'	Moderate	High	High
Silver/Green Buttonwood (<i>Conocarpus erectus</i>)	35'	Slow	High	Low
Wax Myrtle (<i>Myrica cerifera</i>)	25'	Moderate	High	High
Southern Red Cedar (<i>Juniperus silicicola</i>)	30'	Slow	High	High
Black Olive (<i>Bucida buceras</i>)	40'	Moderate	High	Low
Cabbage Palm (<i>Sabal palmetto</i>)	40'	Slow	High	High
Everglades Palm (<i>Acoelorrhaphe wrightii</i>)	25'	Slow	High	Moderate
Royal Palm (<i>Roystonea regia</i>)	50'	Moderate	Moderate	Moderate
Canary Island Date Palm (<i>Phoenix canariensis</i>)	60'	Slow	Moderate	High

(B) Information on native trees, and trees appropriate for our coastal environment, can be obtained from the following agencies, and other sources. This list should not be considered all inclusive.

- (1) Sarasota Forestry Division
- (2) IFAS Sarasota County Extension Service
- (3) IFAS Manatee County Extension Service

- (4) Florida Native Plant Society
- (5) Association of Native Plant Nurseries

98.10 Petition for review.

Any person who is aggrieved by the enforcement of this chapter by any administrative official shall, within thirty days, file a petition with the Zoning Board of Adjustment. The form of the appeal shall comply with Section 158.027 of the Town's Zoning Code.

98.11 Penalty.

Any person found guilty of violating any provisions of this chapter or, any order issued pursuant thereto, shall upon conviction be punished by a fine not exceeding \$500 or by imprisonment for a term not exceeding 60 days. In a prosecution under this chapter, each tree removed, damaged, or destroyed will constitute a separate offense.

SECTION 3. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 4. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 5. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading the ____ day of ____ 2010.

Adopted on the second reading and public hearing the ____ day of ____ 2010.

George Spoll, Mayor

ATTEST:

Trish Granger, Town Clerk

MEMORANDUM

DATE: April 25, 2010

TO: Bruce St. Denis, Town Manager

FROM: Patricia Zunz, Chair of Tree Code Subcommittee

RE: Chapter 98: Tree Code
Recommendations from Joint Commission/Board Subcommittee

The goal of the Tree Code Subcommittee was to follow the direction of the Town Commission to preserve the existing Tree Code, but update and revise the existing ordinance to both simplify and make it more understandable. The language used in the code must be in proper legal form, and be enforceable by the Town staff.

Town Staff, with the assistance of the Town Attorney's office, worked to reorganize and streamline the existing code, while incorporating some limited improvements recommended by the Planning and Zoning Board. These improvements included: clearly stating that improved single-family lots are exempt from the tree code; requiring protection of utility systems; requiring removal of Australian pines and Brazilian peppers for new construction; a fee increase; and, provide public education.

At their April 12, 2010, meeting, the Tree Code Subcommittee comprised of Planning and Zoning Board members Patricia Zunz, Allen Hixon, Phineas Alpers, and Town Commissioner Lynn Larson and Vice-Mayor Jim Brown reviewed all policy changes to the draft tree code that Town Staff and Town Attorney's office had prepared. The subcommittee, chaired by Patricia Zunz, made the following recommendations for the proposed new tree code:

1. Continue to exempt improved single-family lots from tree removal permitting;
2. Include additional protection for utility systems;
3. Require the removal of Australian Pines and Brazilian Peppers, as well as Carrotwood trees (a newly included nuisance exotic) on all new site development; including new or redeveloped single family homes;
4. Increase the tree removal permit fee from \$26.25 to \$50.00;
5. Enhance and include public education about trees during permitting;
6. Investigate Grand or Majestic tree protection in the code;
7. Improve Site Plan Review requirements to insure tree preservation and planting; and,
8. Recommended against joining the Tree City USA program because of additional requirements to the Town.

Please find attached the subcommittee minutes from the April 12, 2010 meeting. At this time, the Tree Code Subcommittee requests consensus from the Town Commission to move forward with a revised tree code incorporating the subcommittee's recommended changes to the Planning and Zoning Board.

Attachments: Tree Code Subcommittee Minutes – April 12, 2010

TOWN OF LONGBOAT KEY
TOWN COMMISSION AND
PLANNING AND ZONING BOARD

MINUTES OF JOINT TREE SUBCOMMITTEE MEETING

April 12, 2010

The Joint Tree Subcommittee meeting was called to order at 9:07 a.m.

Members Present: Chairman Patricia Zunz, Allen Hixon, Phineas Alpers, Jim Brown, and Lynn Larson

Also Present: Steve Schield, Planner, Town of Longboat Key; Ric Hartman, Planner, Town of Longboat Key; Monica Simpson, PZB Director; Virginia Sanders, Garden Club; and Kurt Schultheis, Longboat Observer

Chair Patricia Zunz opened the meeting and stated the goal of the meeting. It was suggested that all present introduce themselves.

Ms. Zunz noted that the subcommittee was here to resolve issues as to which direction should be taken with the tree code. She distributed an outline of issues for discussion. She pointed out the first issue was how to treat single-family and multifamily developments.

Mr. Brown explained that he served on the previous tree subcommittee as a Planning and Zoning Board member, and the previous subcommittee tried to simplify the Tree Code. He stated that the current code treated single-family and multifamily developments differently. The first subcommittee tried to merge these treatments and make everything site plan oriented, but that was rejected by the Town Commission. Ms. Zunz said it was unwise for the Planning and Zoning Board to work with staff to come up with a new draft that the commission would ultimately reject again.

Mr. Brown stated that parts of the code needed to be updated and hoped that the subcommittee would draft a simplified code. He noted a single-family property owner told him last week that he wanted to be able to cut down a tree in his yard without a permit.

Ms. Sanders pointed out education was a very important part of the tree code. Mr. Brown explained that education was made part of the previous code. The code needed to be simple, but it was not simple to get there. Ms. Sanders commented that it could be simple, but they had to keep in mind the value of trees.

Ms. Sanders stated that she was attending as an individual and to represent the Longboat Key Garden Club. Mr. Brown responded that a lot of people disagreed with the position that the Town or the Garden Club should tell individuals what trees they need to protect. Ms. Sanders said a similar situation happened when the state mandated that mangroves were to be protected, but the public ultimately accepted the value of that decision.

Mr. Schield pointed out that a proposed code that required single-family properties to get a tree permit for tree removal or relocation, as well as a proposed code that only required tree protection at site plan approval stage for all properties, had both been rejected by the commission over the last five years.

Ms. Simpson noted that the Town Commission also asked the subcommittee to consider whether the Town should become a Tree City USA. She explained that Ingrid McClellan of Keep Manatee Beautiful spoke to the commission and asked that the Town become a member of the Tree City USA. Ms. Simpson said that BJ Webb, Chairman of the Planning and Zoning Board, voiced concerns to the commission about becoming a member, and Ms. Simpson also had concerns about becoming a member based on her experiences in a previous community she had worked.

Mr. Brown stated he had concerns with the type of trees that people were planting and that was why education was so important.

Ms. Zunz explained that the future size of trees needed to be shown on the Town's recommended list of trees; the code also needs to also list those trees (palms) that were cold hardy - a lot of cold sensitive palms were lost this last winter. Education on trimming of palm trees also needed to be provided. A lot of palms are trimmed very badly, and it led to their death.

Ms. Zunz mentioned one of the concerns was whether single-family homes properties should be exempt from obtaining a tree permit. Ms. Simpson replied that the current draft would exempt single-family from obtaining a permit. Mr. Brown noted that is how the public wants it.

Kurt Schultheis arrived at 9:40 a.m.

Ms. Zunz questioned the committee as to whether there was consensus to exempt single-family properties from tree permitting. The committee agreed.

There was a question as to whether any trees were protected on single-family lots. Mr. Schield explained that mangroves were protected by the state on the entire island, and all landscaping within the Coastal Construction Control Line required state permitting on the beach side. The state protected native species in this area, and encouraged the removal of nuisance exotics trees. Mr. Brown asked if other trees were protected by the state that were not on the beach. Mr. Schield responded that only mangroves were protected by the state.

Ms. Zunz noted it would be valuable to provide education on the growth rate of palms and address any concerns about types of palms (debris, storm, etc.). She asked if there was site plan approval for landscape plans. Ms. Simpson stated that the Town does not review landscaping for single-family homes, so education cannot necessarily be provided about appropriate plantings. Mr. Schield stated that only trees that were to be removed, relocated, or protected on the site were required to obtain a permit, but it was the choice of the property owner to decide which species to plant and where they wanted to plant it.

Ms. Simpson stated that the current ordinance and the draft ordinance do not protect "Grand or Majestic trees" and asked if the subcommittee wished to address it? Mr. Brown mentioned that it was a good idea to protect these trees, but voiced concern that it be written so that trees could still be removed if they prevented a lot from being developed. Ms. Zunz noted it would be a good idea to protect "Grand trees" island-wide, but she had concerns with allowing trimming of "Grand trees" for insurance and storm protection, and wished to ensure that they had some flexibilities.

Ms. Zunz asked for and received consensus that improved single-family lots continue to be exempt from permitting. The subcommittee was looking for language in the proposed code in regards to Grand or Majestic trees. The subcommittee did not have a concern with the language protecting utilities systems. Mr. Brown commented that a brochure should be developed to educate the public about planting the wrong tree under power lines.

Ms. Simpson explained that once a new code was approved, Mr. Schield would be given the direction to develop an educational brochure. She commented another policy change in the new ordinance was to require the removal of Australian Pines and Brazilian Peppers for new single-family homes. It has been a long standing policy to require their removal for other developments. Discussion continued about including Carrotwood trees in the list of trees to be removed. There was consensus to require the removal of Australian Pines, Brazilian Peppers and Carrotwood trees from all new development, including single-family homes.

Ms. Zunz noted another change in the proposed ordinance was the increase of the permit fee from \$26.25 to \$50.00.

Mr. Hixon arrived at 10.05 am.

Ms. Larson questioned why the fee needed to be increased. Mr. Schield explained that the fee had not been increased for over 20 years; it included processing the paperwork and two inspections, but it was up to the Town to decide how much to charge for the permits. Mr. Brown brought up the fact that the Building Division was suppose to be self-sufficient and should be charging for their costs.

Mr. Hixon voiced concern over the concept that a tree on one side of the street required a permit, but a tree that was owned by someone else across the street, in a different

zone was not important and did not require a permit. Ms. Zunz stated the subcommittee had already decided that issue before Mr. Hixon arrived at the meeting. Mr. Hixon asked how that was resolved. Mr. Brown explained that single-family was exempt and multi-family was not exempt from permitting.

Mr. Hixon believed it was unrealistic and "an uneven playing field." Mr. Brown pointed out it was a unanimous decision by the subcommittee before Mr. Hixon arrived.

Ms. Larson asked that education be addressed on a yearly basis, including at the Garden Club. Mr. Hixon asked that education of the code on a yearly basis also be provided to professional landscape firms. Ms. Simpson replied that education could be provided, but could not be required.

Mr. Brown asked if a Town license was required by landscape maintenance companies and how information could be given to them. Ms. Simpson responded that a license was not required, but they did pay a yearly business tax and information may be able to be given to them at that time.

Ms. Zunz asked for and received consensus that the application fee for a tree permit should be increased to \$50.

Ms. Zunz addressed the idea of public education. She discussed adding heights and spread of recommended trees, and provided that she would be glad to work with Mr. Schield to develop a revised list. She also asked that education about palms be included.

Mr. Hixon asked if a tree permit would be required for a dead tree. Mr. Schield replied that no permit would be required for dead trees and diseased tree could be removed with a permit; single-family did require a permit to remove a tree.

Ms. Zunz pointed out that site plan requirements need to be addressed in the code, and would recommend that landscaping requirements be grouped in one section of the code, but they were not addressing other sections of the code at this time. Ms. Simpson noted that could be looked at and the code could be rewritten, much like the mechanical ordinance to bring all cross-references together in one section.

Ms. Larson voiced concern about how quickly permits for diseased trees could be obtained. Mr. Schield explained that it took about two days to obtain a permit, and permitting was important to determine if the description of the disease was accurate. He pointed out that applicants have requested removal of dormant deciduous trees in the past.

Mr. Hixon voiced concern about the trimming standards being a National Standard instead of using a standard by the University of Florida. Ms. Simpson commented this had not changed from the recommendation made by Mr. Hixon during the first subcommittee meeting to adopt the national standard. Mr. Hixon asked that state

standards be explored before adopting a national standard. Ms. Simpson asked if the University of Florida had an adopted standard. Mr. Schield responded he was unsure, but he would research it. Ms. Simpson noted it was important to use an adopted standard.

Ms. Zunz asked if there were any other issues.

Mr. Alpers voiced concern about item 3 (nuisance exotic removal), and requiring the removal of nuisance exotics on vacant sites. Ms. Zunz mentioned it was a good point, but she did not know how the Town could force people to take down the trees. Mr. Brown said that certain properties were very protective of their Australian Pines. Mr. Schield pointed out that it could be very costly for certain property owners, but in general it was a very good idea. Ms. Simpson pointed out that the Town Commission in the past had budgeted grant money for the removal of Australian Pines on private property. Ms. Larson stated that this was a good time (budget time) to let people know to ask the commission for funds to remove Australian pines. She was interested in knowing how many people would be interested in obtaining funds.

Mr. Hixon asked if any other state agencies have regulations over the beach vegetation and requested a copy of the old beach maintenance brochure. Mr. Schield commented that FDEP had jurisdiction over the beach, but the state encouraged the removal of nuisance exotic vegetation.

Ms. Zunz felt that consensus had been reached and that the next step was to submit their recommendation to the Town Commission. Mr. Brown recommended that the subcommittee submit their report to a Town Commission meeting and offered to arrange it.

Mr. Brown asked if the subcommittee wished the town to be a Tree City USA. Discussion ensued regarding the Tree City USA program and after discussion, there was consensus that the Town not participate in the Tree City USA program.

The meeting adjourned at 10:57 a.m.

MEMORANDUM

DATE: February 10, 2010

TO: Honorable Mayor Lee Rothenberg
and Town Commissioners

FROM: B.J. Webb, Chair
Planning and Zoning Board

RE : Chapter 98: Tree Code Rewrite
Request For A Joint Commission/Board Subcommittee

In 2008, at the request of the Town Commission, the Planning and Zoning Board appointed a subcommittee to work with the citizens and residents of the Town, as well as professionals who were considered experts in the field, to rewrite the existing tree code (Chapter 98 of the Town Code of Ordinances) to be more user friendly and reflect the desired policy of the Town.

The Board subcommittee held numerous meetings with a number of citizens and stakeholders and presented the proposed changes drafted from those meetings to the Commission in April 2008. At that time, there was "...majority consensus to not support the recommendations outlined in the subcommittee's report." Additionally, the Planning and Zoning Board was directed by the Commission to continue to review the code.

Approximately one year later, the Planning and Zoning Board revisited the tree code. Staff provided a memorandum dated April 7, 2009, which provided a summary of the Commissioner comments from the April 17, 2008, workshop meeting. From that it was derived that there was "...general consensus of the Town Commission to preserve the existing Tree Code with minor modifications." In April and May 2009, the Board continued working on the redrafting of the tree code that resulted in direction to the staff.

During the summer of 2009, Town Staff drafted new code language, which reorganized the current regulations and made minor modifications to the policy of the code. This was presented to the Board in January 2010. The Planning and Zoning Board had extensive discussion about the staff draft and recognized that without input and collaboration with the Town Commission we may be "spinning our wheels" to draft an effective tree code.

It was the unanimous consensus of the Board to request that the Town Commission form a joint subcommittee comprised of three members of the Planning and Zoning Board and members of the Town Commission, with staff working as technical support. Patricia Zunz has agreed to serve in this consensus building opportunity for our Board. She was a key participant, as a citizen, of the subcommittee efforts in 2008. Phineas Alpers and Al Hixon have also agreed to serve, if the Commission agrees to form the subcommittee.

As the Chair of the Planning and Zoning Board, I respectfully request the Town Commission consider the formation of a tree code review subcommittee with the assistance of staff to rewrite the existing tree code. Regular reports would be provided to the Commission and the Board in workshop session.

Thank you for your consideration, of what the Planning and Zoning Board believes would be a worthwhile endeavor. Please let me know if you have any questions.

attachments:

- January 19, 2010, Draft Planning and Zoning Board Minutes
- October 2, 2009, Staff Memorandum to the Planning and Zoning Board
- September 2, 2009, Draft Staff Tree Protection Code
- May 19, 2009, Planning and Zoning Board Minutes
- April 21, 2009, Planning and Zoning Board Minutes
- April 7, 2009, Staff Memorandum to the Planning and Zoning Board
- April 17, 2008, Town Commission Workshop Materials – Subcommittee Chair Hixon's report to the Town Commission
- April 17, 2008, Town Commission Workshop Minutes – Subcommittee Chair Hixon's report to the Town Commission
- Existing Tree Code – Chapter 98 of the Town Code of Ordinances

Draft Planning and Zoning Board Minutes

January 19, 2010

AGENDA ITEM #5
TREE CODE DISCUSSION

Steve Schield, Planner, reviewed the staff report noting that at the May 19, 2009, meeting, the P&Z Board directed staff to bring back a revised tree code that could be forwarded to the Town Commission for their review and consideration. The Board wished to follow the direction of the Town Commission, but revised the existing ordinance to both simplify and make it more understandable. He commented that Town staff, with the assistance of the Town Attorney's office, worked to reorganize and streamline the existing code, while incorporating some of the limited improvements of the Board. These improvements included: clearly stating that improved single-family lots were exempt from the tree code; requiring protection of utility systems; requiring removal of Australian pines and Brazilian peppers for new construction; a limited fee increase; and, provide public education.

Mr. Symanski asked if someone did a substantial renovation, then they would not need to remove the Australian pines and Brazilian peppers. Mr. Schield replied no; it would only apply to new construction. Mr. Symanski asked why the Town would not take the opportunity to remove those trees. Ms. Simpson commented that if it was the direction of the Board, then staff would rewrite the draft accordingly with guidelines provided by the Board. Mr. Wild believed the Town was missing an opportunity if they did not include requiring single-family homes to remove non-native plants, and suggested that it could be tied into the issue of public safety. He believed if someone did an improvement of any kind, that required a permit, then they should be required to remove any non-native plants within that lot. He suggested the Board ask staff to draft some regulations and provide a better enforcement mechanism.

Mr. Symanski asked if someone obtained a permit to replace a window, then the Town was requiring removal of the trees. Chairman Webb responded that was the question the Board should decide; whether the Board wished to include language to remove Brazilian peppers and Australian pines, and at what point of renovation would that be triggered. Mr. Symanski believed it was discussed previously that it was not reasonable to have regulations for condominiums that did not apply to single-family. He would suggest it be required for a substantial renovation. Mrs. Zunz commented that either the Town has an ordinance that indicated the Town did not want Australian pines or Brazilian peppers on any lot, or require it during clearing of a lot. She did not agree with requiring it if someone pulled a permit. Mr. Alpers agreed with Mrs. Zunz.

Mr. Hixon asked if that was a site plan approval process; that was the point where it should apply. Mr. Alpers noted that if they were not going through a site

plan approval, then the Brazilian peppers remained on the property. Mrs. Zunz asked what would happen if someone owned property where it remained in its natural state for a number of years and the Brazilian peppers proliferated on the lot. She did not believe it would accomplish anything, and reiterated that the Town should require they be removed regardless if improvements were being made.

Mr. Symanski pointed out that the Board had previously forwarded materials to the Town Commission, who returned it back to the Board because they did not wish to address single-family homes. Mr. Hackett noted that if the Board was discussing eradicating Australian pines and Brazilian peppers, then they need to have a good reason for it to be done, as they were placing the financial burden on the property owner to remove the trees. He suggested that if there was a new footprint that encroached on the tree, then it should be removed, but questioned whether the Board could dictate they remove from the entire site.

Mr. Hixon commented that the tree ordinance was to ensure a reasonable canopy on the Key. He noted that trees were important, regardless who owns them, and it was the trees the Town was trying to protect. He voiced concern that a single-family homeowner was allowed to do what he wished with a tree without fear of a fine; however, if someone lived in a condominium, there would be consequences. He voiced concern with the way it was being approached, and he still believed some regulations and controls should be enacted and in place; the first place that it should apply was when requesting a change in the land. He believed the Board might need to look at any "stripping activity" of land, in terms of vegetation, so they could develop a method of ensuring that when that happens, it still resulted in the best result.

Mr. Symanski believed the intent needed to be expanded to include the removal of Australian pines and the Brazilian peppers (exotic nuisances). Mr. Hackett commented that the Board had been given direction from the Town Commission, and if they reviewed their comments, the majority of the Town Commission requested "light" modifications to the existing tree code. He asked if there was a review of tree codes from other jurisdictions. Chairman Webb responded that the Tree Subcommittee had reviewed a number of other codes and had also heard from a number of landscape professionals and others.

Mr. Symanski referred to the issue of the Australian pines and the hardship to the individual owner for removal, but noted that he thought Australian pines were a danger to the community, because on a barrier island. He commented that the hardship might be an opportunity to protect the neighborhood. Mr. Redgrave asked if the Town had removed all those Australian pines in danger of falling on public property and rights-of-way, and that there was a setback from Gulf of Mexico Drive that would require removal. Mr. Schield responded the former

Town fund that provided monetary assistance with removal of the trees was based on the setback from Gulf of Mexico Drive. Mrs. Zunz commented that one of the problems she had was that most people did not plant the pines on their property, but they already existed on the lot. She found it unfair if someone came in to do a minor change to their home that required a permit, and were told, because they had Australian pines and Brazilian peppers on the lot, they would be required to remove those trees.

Mr. Wild asked those who served on the subcommittee how they felt about the proposed ordinance as written. Chairman Webb did not believe the Board was there yet, and believed there was a need to have an independent group take the ordinance, re-evaluate it, and determine answers. Mr. Wild believed the proposed ordinance was in a condensed form from what the subcommittee had previously proposed, and suggested that the condensed form be expanded to incorporate language that site plan approvals would be the optimal opportunity to address the issue and further eradicate the trees. Mr. Hixon believed the Board should work with the Town Commission at a joint workshop to work out the various issues, which might result in something more positive and provide a better direction. Ms. Simpson discussed that staff had taken the specific direction of the Board, which was to take the Town Commission's direction and draft an ordinance. She mentioned that the Town had previously worked several times with a mixed group of Town Commissioners and board members on other issues. She suggested that establishing a subcommittee with a couple of Town Commissioners and a couple of board members, with staff providing factual information, might be helpful.

MR. HIXON MOVED THE P&Z BOARD REQUEST THAT THE TOWN COMMISSION ESTABLISH A JOINT WORKSTUDY GROUP CONSISTING OF TOWN COMMISSION REPRESENTATIVES AND PLANNING & ZONING BOARD REPRESENTATIVES TO EXPLORE THE ISSUES WITH THE DRAFT TREE CODE. MR. SIEGLER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; HACKETT; AYE; HIXON, AYE; REDGRAVE, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Chairman Webb requested that Mrs. Zunz be the P&Z Board's liaison for the group, and that she choose two other members to be a part of the group.

Mr. Redgrave commented that he did not believe the ordinance would move forward unless the issue of whether the Town was going to ban or not ban the Australian pines and Brazilian peppers was addressed.

Discussed ensued on appointment of additional members for the subcommittee. In addition to Mrs. Zunz, there was consensus to appoint Mr. Hixon and Mr. Alpers.

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