

- 1-2. CALL TO ORDER AND ROLL CALL.** Chair Goddard called the meeting to order at 7:30 pm at Durham City Hall.
Commissioners Present: Brian Goddard, Krista Bailey, Pat Saab, Laura Volm, Julie Atwood, and Gary Paul.
Commissioners Absent: Jeff Anderson
Staff Present: City Administrator Linda Tate and Administrative Assistant Lynn Schroder
Public Present: Erin Wernli and Lillian Johnson
- 3. MINUTES OF THE DECEMBER 4, 2018 COMMISSION MEETING.** Commissioner Volm moved to approve the minutes of the December 4, 2018 meeting. Commissioner Atwood seconded the motion. The minutes were approved 6-0. **MO 010819-1**
- 4. PUBLIC FORUM – none.**
- 5. SELECTION OF CHAIR AND VICE CHAIR FOR 2018.** Commissioners voted for the position of Chair and Vice Chair for 2019 using paper ballots. City Administrator Tate collected and tallied the votes. Commissioners elected Brian Goddard and Krista Bailey as Chair and Vice Chair, respectively, of the Planning Commission for 2019.
- 6. ILLEGAL TREE REMOVAL – 8268 SW KINGFISHER WAY.** City Administrator Tate presented information regarding a tree that was cut down without a permit at 8268 SW Kingfisher Way at the end of November 2018. The City sent a letter notifying the homeowner of the violation of Chapter 5 of the Durham Development Code on November 29, 2018. The homeowner did not respond. The city sent a second letter on December 31, 2018. Upon receiving the second letter, the homeowner called City Hall to say that she understood that the landscape contractor would obtain the permit to cut down the tree.

Erin Wernli, the daughter of the homeowners, spoke on behalf of her parents. She stated that in November, they obtained a quote from a landscape contractor to cut down the tree. The property owners wanted to cut down the tree because the roots of the tree broke the waterline last summer. Wernli provided a water bill from April 2018 for \$1,627.71 as evidence of the break in the waterline. She did not have a copy of the repair contract. She did not have any photos that showed the roots of the tree damaging the waterline. She said that the repair contractor said the tree roots would likely break the water line again and he recommended that the tree be cut down. Wernli stated that, by hiring a professional landscape contractor, they expected that the work would be done according to all legal requirements including obtaining a tree permit.

Lillian Johnson, the homeowner who obtained the quote, testified that the landscape contractor verbally assured her that he would obtain a permit to cut down the tree when he provided an estimate to do the work. She did not get written assurance that they would obtain the tree permit. She stated that when she received the notice of violation from the City, she called the landscape contractor to get the permit. She reported that once the landscape contractor returned her call, he said that they did not get a permit to cut the tree down and that it is their policy that the homeowners always get the required permits.

Wernli provided a copy of the landscape quote. Commissioner Atwood noted that the quote included removal of a cedar. Wernli testified that the incense cedar was approximately 6-8

inches DBH and was dead. It was planted in 1994. Tate stated that a permit was likely required for the second tree as well.

Wernli stated that they did not intentionally circumvent the tree permit process. They expected that, by hiring a professional service, the professional contractor would handle all aspect of cutting down the trees. Additionally, Mrs. Johnson stated that she received a verbal assurance from the contractor that he would obtain the necessary permits. Wernli stated that her parents are living on a fixed income. She asked the Commission for consideration as they decide the matter.

Commissioner Saab asked how long the homeowners have owned the property. Wernli stated that her parents bought the house in 1995. Saab stated that tree permit requirements have been featured frequently in the City newsletter. Saab stated that the homeowners should have known their responsibilities. Wernli stated that her father is very ill and she has taken on many of the responsibilities for the home while working a full-time job. She stated that she does not read the City newsletter. She reiterated that she thought she had hired a professional contractor who would take care of all the necessary requirements. She stated that it was not her intent to circumvent the permit process.

Commissioner Volm stated that it did not appear that the homeowner purposefully circumvented the permit process. She suggested a \$250 fine plus the permit application fee.

Commissioner Paul stated that is the responsibility of the homeowner to get the permit. He suggested that the homeowner should be required to mitigate for two trees.

Commissioner Atwood stated that it does not appear that the homeowner purposefully circumvented the permit process. She stated that it appears that the homeowner did understand that they needed a permit to cut down the tree but relied on the contractor. She stated that appears to be a misunderstanding about who was going to get the tree permit. Further, Atwood stated that the water bill supports the claim that the tree was cut because it was damaging property. Because the tree was damaging property, it is likely that the permit would have been approved. Atwood noted the financial hardship of the property owner. She suggested that the homeowner should be required to plant two trees as a fine for removing the trees without a permit.

Commissioner Saab was amenable to a reduce penalty.

Commissioner Bailey stated that the Commission has an obligation to uphold and reinforce the tree code. Penalties should be fair across the board. Penalties should be balanced but not punitive. She stated that there are objective considerations and penalties should meaningful.

Commissioner Goddard stated that the broken waterline was a consideration, but he was concerned about precedent and perception.

Commissioner Atwood stated that the Commission should be subjective rather than prescriptive when deciding penalties for violating the tree ordinance. She stated that it is the purpose of the Commission is to judge what is right for the City and the homeowner when implementing the Tree Ordinance. She noted that the individual circumstances were relevant when making a decision. Because of the particular circumstances of this homeowner, she believed a reduced fine was appropriate.

City Administrator Tate noted that if the proper procedures had been followed, the homeowner would have needed a Type E permit for both trees removed. She stated that Type E permits require mitigation. She stated that there is an emergency clause in the Tree Ordinance that allows homeowners up to 48 hours to apply for a tree permit if the tree is cut down as an emergency.

Commissioner Atwood moved to fine the homeowner \$250 per tree plus the \$35 application fee (\$535). Instead of paying the fine, the homeowner has the option of planting two trees on the property. Commissioner Goddard seconded the motion. The motion passed 6-0.

MO 010819-2

7. **COMMISSIONER COMMENTS.** None.
8. **ADJOURN.** Commissioner Saab moved to adjourn the meeting. Chair Goddard adjourned the meeting at approximately 8:25 pm.

Approved: _____
Brian Goddard, Chair

Attest: _____
Linda Tate, City Administrator