

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, Laurie Volm, Pat Saab, Gary Paul, and Julie Atwood

Commissioners Absent: Jeff Anderson

Staff Present: City Administrator Linda Tate and Administrative Assistant Lynn Schroder

Public Present: none

3. MINUTES OF THE MAY 7, 2019 COMMISSION MEETING. Commissioner Atwood moved to approve the minutes of the May 7, 2019 meeting. Commissioner Volm seconded the motion. The minutes were approved 6-0. **MO 060419-1**

Tate presented a memo to the Planning Commission about the May 2019 Planning Commission minutes at the request of the City Council. As part of the regular agenda packet, the City Council receives a copy of the draft Planning Commission minutes each month. The City Council raised its concern that the Planning Commission was misinterpreting the Tree Preservation Ordinance resulting in implementation errors. Consequently, the City Council wanted to comment about the intent and interpretation of the ordinance.

The City Council advised that the Tree Preservation Ordinance intends to preserve existing trees, not just replace trees by mitigation or maintain the tree canopy. The City Council directed the Planning Commission to the “whereas” statements in the ordinance for policy guidance on how to interpret the ordinance. They also referenced the historic interpretation and implementation of the ordinance as guidance.

Commissioner Saab stated that the Commission does not consider very many tree permits. She stated that the updated process for evaluating tree permits should address their concerns.

Tate specified that the City Council was concerned about statements that it did not matter if the property owner followed through with a proposed improvement after cutting a tree. The Council felt strongly that if a proposed improvement is used as a rationale for removing a tree, then the approval to cut it down should require the improvement as a condition of the permit approval. They also stated that before a tree removal is allowed to accommodate an improvement, alternatives to removal must be considered, and the Planning Commission must determine that no reasonable alternatives (e.g., different placement of structures, a reduction in the size of the improvement, or other accommodation to preserve the tree) exist that allow the property to be used as permitted. The applicant should provide plans and a detailed explanation as to why alternatives are not reasonable.

Commissioner Bailey felt wrist-slapped by the City Council. She felt that someone from the Council should attend a Planning Commission meeting to discuss their concerns. She thought the language of the ordinance was very general and vague without quantified guidance for implementation. She said that the Commission did not receive any training or policy guidance for implementing the Tree Ordinance. She said the “whereas” clauses are meaningful, but they do not stipulate any guidance. She said that the Planning Commission

considers the “whereas” clauses in making a decision but, at the same time, property owners need the opportunity to continue to use and improve the value of their homes. She said that she spent hours researching tree canopies and tree canopy management over the weekend. In her view, the Commission does a fair job evaluating permits and making the best decision. She stated that without better guidance on how to manage the tree canopy, the decisions are very difficult.

Tate responded that the City Council had discussed their concerns about how Tree Ordinance has been interpreted. In January 2017, they asked the Planning Commission Chair and Vice Chair to attend a City Council meeting to discuss the Tree Ordinance interpretation. Tate stated that the City Council was open to having a work session with the Planning Commission to discuss the Tree Ordinance. They also suggested that the Commission have a work session with an arborist. Tate clarified that the Council was concerned about the May 2019 minutes because there were comments made by some Commissioners that directly contradicted the ordinance and the duties and responsibilities of the Commission.

Further, Tate clarified that the Durham Tree Ordinance was never intended to be a tree canopy management tool. The Tree Ordinance clearly states that the intent is to preserve existing trees. “Preserve” is defined by its regular, dictionary meaning to mean, “maintain in its original or existing state.”

Bailey said that she did not understand the difference between tree canopy management and tree preservation.

Commissioner Volm stated that she reread the Tree Chapter of the Development Code. She felt that there is clear guidance on the implementation of tree protection standards. Volm said that she did not think the Planning Commission was consistent with implementing the guidance on tree protection.

Bailey stated that each tree permit should be evaluated individually. Bailey did not agree that keeping every tree was a beneficial, realistic, practical, or safe goal for the City. She stated that there has to be a continual regeneration of trees.

Volm stated the DDC is clear that the goal is to preserve healthy trees where they can be by requiring applicants to modify their proposals reasonably. She said Section 5.11 of the DDC states that the Commission reserved the right to condition or deny permits “for all permit types” when it is in the “best interest and welfare of the community as a whole.” Volm stated that the Commission should condition approvals to require that the improvement be built. She felt that the Council was alarmed by Commissioners saying that it was not their responsibility to place conditions on tree approvals. She stated that without requiring that an improvement be built, anyone could claim that they intend to build an improvement to gain approval but have no real intention of following through on the improvement.

Commissioner Atwood stated that, in the Hill case, the permit type did not require conditions. She said that is it reasonable to require an applicant to complete the proposed improvement if it is used as a rationale to cut the tree. She stated that she believes that the Commission has improved its discussion and consideration of tree permits since the Council’s original concerns. She supported a work session with the Council to discuss the

meaning of “preservation.” She stated that there is a risk if the tree canopy is not managed. She cited an Urban Forest Management Tool Kit that emphasizes the need for trees of different ages to maintain the tree canopy. Also, diversifying the tree canopy is important. Atwood stated that the May 2019 Planning Commission minutes should not stand because they do not reflect the context of the discussion. She believed that the Commission fairly considered the permit request. She suggested that a member of the Planning Commission should regularly attend the Council to present the minutes, so the Council gets an accurate picture of what took place in Planning Commission meetings. She thought having a Commissioner attend the City Council meeting would be a conduit for direct policy discussions about the Tree Ordinance.

Volm disagreed that the Commission had a good discussion at the May 2019 meeting. She stated that she was shot down for suggesting that conditions were appropriate. Atwood stated that all Commissioners should feel heard during discussions.

Commissioner Goddard asked what specific comments from the minutes prompted the Council memo. Tate stated that the Council was specifically concerned about the comment that the PC did not need to condition the tree removal because it would be problematic to enforce. Additionally, they were concerned about the comment that it did not matter if an applicant followed through on a proposed improvement when using it as a rationale to cut a tree. The Council also disagreed with the comment that it is the PC’s responsibility to require mitigation, not to decide if a tree removal is necessary for the proposed improvement.

Atwood asked if the Council was concerned that members of the PC did not have good intentions. Tate stated that was not their concern. Volm stated that she thought they were concerned with the interpretation of the Tree Ordinance.

Goddard stated that the City Council and Planning Commission should have a work session to discuss preservation and regeneration. He said that there is a need for regeneration of trees. He stated that the PC thoughtfully evaluates the permit on a case-by-case basis. He believes the Planning Commission decisions have been reasonable. He noted that the criteria for removal are very vague.

Tate stated that she asked the City Council to clarify if the Tree Ordinance intended to simply require mitigation for tree removals. If so, then a Type 2 decision process is unnecessary and burdensome. A straightforward mitigation policy could be implemented administratively instead.

Goddard asked for clarification about the difference between someone asking to cut a tree for no reason versus someone who desires to improve their property. He stated that if a property owner has a reason to cut a tree that increases property value, then it comes before the Planning Commission for review.

Tate reiterated that the Council believes that if a proposed improvement is used as a rationale to cut a tree, then approval should be conditioned on the installation of the improvement. If the applicant did not follow through on the improvement but did cut the tree, then it would be an illegal tree removal. Section 5.11 of DDC clearly states that the Planning Commission reserves the right to deny a permit, require mitigation, or require

mitigation beyond the minimum when it is in the best interest and welfare of the community as a whole.

Bailey stated that PC would probably not approve a tree removal for maintenance or nuisance concerns.

Atwood stated that it seems like the Council just disagreed with the PC decision.

Goddard stated that he thought the Council wanted to PC to ensure that the improvement was completed within a time limit.

Bailey stated that she believes that the PC considers tree removals in an equitable manner. She said that she would not have conditioned the Hill tree removal request to require installation of the AstroTurf because it was a lot. She stated that the property owner was seeking to create a play area in their backyard, and the installation of the AstroTurf was not necessary. She acknowledged that the PC missed an opportunity to require the implementation of the use (i.e., children's play area). She stated that when a homeowner takes the time to go through the tree removal process and has a plan, the PC should be thoughtful about their effort. Bailey questioned the value of "preserving" trees. Instead, she believes the policy should be to regenerate the tree canopy. She stated that some trees are old and should be removed. She stated that thinks the PC responsibility is to balance the tree protection and property improvement. She said that there are many trees in Durham that should not have been left on residential lots. She stated that trees do not always create value.

Tate stated that the job of the PC is to implement the ordinance and policies that are passed by the elected body, the City Council. She stated that the DDC allows the PC to require adjustments to a proposal. The PC could have limited the size of the AstroTurf to save some of the trees. The PC should represent the best interests and welfare of the community.

Atwood stated that she is serving on the PC as a public servant of the community and citizens. She is not representing a group of people who do not want any trees cut down. She would like better guidance on tree canopy management. She would like the City to do a study of the tree canopy and develop urban forestry management policies so they can be applied to tree decisions.

Goddard stated that he agrees with tightening the conditions on improvements to remove a tree, but he believes that Durham should value property improvements. He questioned the value of preserving existing trees. He supported tree mitigation to balance the competing goals. He believes that the PC has come to an understanding of Council concerns.

The Planning Commission agreed that a workshop with City Council to discuss the tree policies is desirable. Tate suggested that Commissioner attend the September 2019 City Council meeting to discuss the issues.

4. **PUBLIC FORUM** – none.
5. **REQUEST FROM PROPERTY OWNER OF ILLEGAL TREE REMOVAL – 8268 SW KINGFISHER WAY.** Lillian Johnson requested to be placed on the agenda to seek a

modification to the Planning Commission decision concerning the illegal tree removals on her property. She was not present to make her request. Chair Goddard tabled the request until she can be present.

6. **TREE REMOVAL PERMIT APPLICATION – 17734 SW 81ST PLACE, PERMIT 515-19.** Stu and Krista Bailey are seeking approval to remove a 90-foot, healthy coast redwood from the front yard of their property. They are requesting approval to remove the tree as a Type B approval. Type B permit is for removal of a tree that is dangerous or potentially destructive to public or private property. The applicants submitted an arborist report to support their request. Krista Bailey was present to answer questions about the application. Because she is the applicant, Commissioner Bailey recused herself from the decision process for this application.

The arborist report states the coast redwood tree is 59 inches DBH and 90 feet tall. The tree has grown too close to the house, creating an imminent hazard to the property. The photographs provided show that the tree is touching the gutters of the house and causing damage.

The Planning Commission determined that the request to remove the coast redwood meets the criteria of a Type B permit. Because the tree is in healthy condition and is approximately 90 feet tall and 45 feet wide and removal could affect the neighborhood characteristics, the Planning Commission considered the tree removal through a Type 2 process for review and decision by the Planning Commission. The City provided notice to affected persons on May 15, 2019.

There were no comments regarding the effect of tree removal on erosion, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks, or desirable balance between shade and open space.

Bailey stated that she would consider planting a mitigation tree. The application says that the property owner would plant a 6' Japanese umbrella pine or similar tree as mitigation for the removal.

Based upon the category of a Type B removal permit, the Planning Commission finds that although the coast redwood is a very large, mature, healthy tree, it is touching the house and creates an imminent hazard to the property.

Commissioner Atwood stated that the removal meets the criteria for approval consistent with the stated purpose of the tree protection ordinance. Commissioner Atwood asked Bailey if there was a suitable location on the property to plant a mitigation tree. Bailey said that a mitigation tree could be planted in the front yard farther away from the house.

Commissioner Atwood moved to approve permit 515-19 as a Type B permit with mitigation of one tree from the list of approved mitigation trees planted in a location determined by the applicant. The mitigation tree shall meet the size requirements provided in the Durham Development Code. Commissioner Volm seconded the motion. The application was approved (5-0). **MO 060419-2**

7. **TREE REMOVAL APPLICATIONS – 7651 WILLOWBOTTOM WAY, PERMITS 485-18 AND 486-18.** Brett and Julie Atwood are seeking approval to remove two trees. They are requesting to remove a maple tree in the front yard as a Type B tree removal (486-18) because it is leaning significantly over the road and is in danger of falling. The City previously approved this tree to be cut. They are also requesting to remove a tall, healthy Douglas fir from their backyard (485-18) to install an outdoor living area. The applicants

submitted a consultation summary, design plan, cost estimate for the outdoor living area, and a cost estimate for the tree removal. Julie Atwood was present to answer questions about the application. Because she is the applicant, Commissioner Atwood recused herself from the decision process for this application.

Atwood testified that she applied as a Type E permit but that she would like the Commission to consider it as a Type C permit application. Atwood is seeking to install an outdoor living area in her backyard. She plans to build a paver patio, a natural gas barbeque, and a fire pit in phases. The first phase of installation of a paver patio and gas line trenches to the barbeque and fire pit requires the removal of the Douglas fir tree. She proposed to plant one mitigation tree in her front yard and pay one fee in lieu of mitigation.

The design plan submitted with her testimony shows that the barbeque will be located where the tree is currently growing. The gas lines to the barbeque and fire pit will require that an 18-inch deep trench from the side of the house to the barbeque and the fire pit. Atwood testified that the gas line trench would compromise the root integrity of the tree. She stated that it is necessary to remove the tree to trench and install the gas lines to the barbeque and fire pit. She stated that the proposed location of the barbeque is the most logical location in relation to her patio door and kitchen window.

Commissioner Volm stated that design plans submitted with Atwood's testimony are a different design than what Atwood showed her on June 3 when Volm view the property. Volm stated that the design the Atwood showed her the day before did not have the barbeque located where the tree is currently located. Volm asked if Atwood could keep the tree by moving the barbeque further away from the tree.

Atwood stated that regardless of where the barbeque is located; the gas trench will compromise the roots of the tree because of the extensive root system. Additionally, the digging required to install the paver patio will also likely damage the tree's roots. Atwood stated that placement of the barbeque in the design plan makes the most logical sense in relation to her patio door and kitchen window. She plans to use the kitchen window as a pass-through.

Commissioner Paul asked if the gas lines could run along the house to prevent damage to the tree roots. Atwood stated that the tree roots grow to her house foundation. She stated that her contractors told her that the gas line needs a 30 degree turn around the corner of the house so it cannot skirt the house.

Commissioner Goddard stated that cutting roots can put the tree in danger of falling. Disturbing the root zone can expose the roots to laminate root rot fungus.

The City received three letters from Kingsgate residents commenting on the proposed removal of the Douglas fir. Margaret Alvarez commented that the tree is probably over 75 years old and has been in the neighborhood since Kingsgate was built. She commented that the previous homeowners were able to work around the tree and installed a deck for outdoor living. She stated that the neighborhood benefits from the tree. She requested that the PC deny the permit. Michael Landert commented that the tree is healthy and it contributes to the continuity of the community. He stated that the Douglas fir is part of a grove of trees. He commented that the tree provides shade and habitat for birds. He requested that the PC deny the permit. Steve Buelna commented that the tree appears healthy and vigorous and does not appear to lean. He commented that it is very attractive tree as viewed from the street. He stated that the owner and prior owner maintained the tree by thinning dead limbs. He stated that the property owner should consider an alternative design for the outdoor living area that would keep the tree. He stated that the

tree is part of a grove of trees that provide wind blocks from the southeast direction. He stated that the tree contributes to the wooded character of the neighborhood. He requested that the PC deny the permit.

In her application, Atwood stated that Douglas fir is very large and beautiful, but there are several other large, beautiful Douglas firs in the neighborhood and surrounding her property. She also has two smaller Douglas firs in her backyard on the other side of the yard.

Atwood stated that the cutting the Douglas fir will not adversely affect the topography of the land, erosion, soil retention, stability of the earth, flow of surface water, protection of nearby trees, windbreaks, and desirable balance between shade and open space because the area where the tree is located in a small area between neighboring properties. The adjacent property has another, smaller Douglas fir tree. Removing the tree on her property will provide an opportunity for the Douglas fir on the neighboring property to grow in a healthy fashion. She states that other trees in the area will maintain existing wind paths. Removing the tree will improve the balance of shade in the backyard and allow other plants to grow. Atwood stated that the tree is not adjacent to an upland wooded corridor or streamside vegetated corridor.

Atwood stated that the tree removal will be nullified by the planting of a mitigation tree. She provided a photo shopped depiction of the view from the street with the tree removed. She stated that the neighbor's Douglas fir fills in skyline and the tree removal does not diminish the wooded character of the neighborhood. She stated that removing the tree and installing the outdoor living area will improve the value of her property.

Commissioner Paul stated that it was necessary to remove the tree to construct the proposed improvements as presented by the applicant. He stated that a modified plan might be able to keep the tree.

Commissioner Bailey stated that the removal meets the criteria for approval consistent with the stated purpose of the tree protection ordinance. She stated that the proposed design of the outdoor living area was reasonable and made sense for the property. She stated that the proposed improvement allows the property owner to use their property in an economically beneficially manner. She stated that two Douglas firs will remain on the property and the property owner agrees to plant a mitigation tree.

Commissioner Goddard agreed the proposed design of the outdoor living area was reasonable and made sense for the property. Tree removal was necessary to construct the proposed improvement. He stated that if the applicant was proposing a home addition, the PC would not require an alternative design. An outdoor living area is like a home addition. He stated that the adjacent smaller Douglas fir will have the opportunity to fill in the canopy that will be lost. He stated that the machinery to do the work will likely damage the roots of the tree.

Commissioner Saab thought that the tree did not have many limbs. She stated that tree removal was necessary to construct the improvement. She stated that tree removal would probably be necessary with an alternative design. She thought the tree roots were a tripping hazard.

Commissioner Volm stated that the applicant should consider an alternative design to the improvement that kept the tree. She wanted to know if the gas line could be installed to prevent damage to the roots. She felt that the project design was not consistent. She felt that more supporting documents were necessary.

The Planning Commission determined that the request to remove the Douglas fir meets the criteria of a Type E permit. The Planning Commission considered the tree removal through a Type 2 process for review and decision by the Planning Commission. The City provided notice to affected persons on May 14, 2019.

Based upon the category of a Type E removal permit and the statements provided by the applicant, the Planning Commission finds that the applicant's proposed improvements necessitate the removal of the Douglas fir tree to build a barbeque and patio. The proposed design makes more sense than alternative designs and makes the most economic sense. The Planning Commission considered the applicant's desire to create an outdoor living area to improve the enjoyment and value of the property, the location of the tree and its impact on the desired improvement, and alternative configurations proposed improvement plan. Although the tree is a healthy, mature, native Douglas fir, it is one of several Douglas firs in close proximity to the applicant's property. Two Douglas firs will remain in the backyard of the property and will grow to fill the canopy space. The applicant will mitigate the removal of the tree by planting one tree on the property and paying an additional \$250 fee in lieu of mitigation. Removal of the tree will not diminish the wooded character of the neighborhood surrounding the property.

Additionally, the Planning Commission finds that the removal of the tree will not adversely affect the topography of the land, erosion, soil retention, stability of earth, flow of surface water. The removal of the tree will improve the desirable balance between shade and open space by allowing more light for the neighboring Douglas fir. The tree is not located near an upland wooded corridor or streamside vegetated corridor as identified in the Comprehensive Plan.

Commissioner Paul moved to approve permit 486-18 as a Type E permit with mitigation of one tree from the list of approved mitigation trees and a \$250 fee in lieu of planting an additional mitigation tree. The applicant must apply for a mechanical permit for the gas line to the barbeque and fire pit before the tree is cut. The applicant must complete the proposed improvements within 6 months of approval. If the proposed improvements cannot be completed within 6 months, the applicant must apply for an extension before the expiration date. Commissioner Bailey seconded the motion. The application was approved (5-0). **MO 060419-3**

Tate stated the removal of the maple in the front yard was previously approved administratively because it was leaning significantly over the road and could be in danger of falling on the street. However, the permit expired because the applicant wanted to remove both trees at the same time. The applicant reapplied to remove the maple at the same time as the Douglas fir.

The Planning Commission finds that because the tree could fall on the street, the request to remove the maple tree meets the criteria of a Type B permit (485-18). The Planning Commission is considering the tree removal through a Type 2 process for review and decision by the Planning Commission.

Commissioner Goddard moved to approve the reapplication permit 485-18 as a Type B permit. No mitigation is required. Commissioner Volm seconded the motion. The application was approved (5-0). **MO 060419-4**

8. **PROPOSAL FOR NEW PLAY STRUCTURES IN DURHAM PARK.** Tate presented a proposal for new play structures in the park. Two new structures will replace the worn out structures. The plans also include a tire swing and two baby swing sets. Tate plans to keep the swing set located at the west side of the play area. The surface chips will be replaced with playground-grade chips. ADA curb cut outs will provide access to the playground from the parking lot. Tate stated that she plans to apply for a grant to assist with funding.
9. **COMMISSIONER COMMENTS.** Tate reviewed her memo to the Planning Commission. Commissioners agreed that a workshop with the city arborist would be helpful.
10. **ADJOURN.** Commissioner Atwood moved to adjourn the meeting. Chair Goddard adjourned the meeting at approximately 10:40 pm.

Approved: _____
Brian Goddard, Chair

Attest: _____
Linda Tate, City Administrator