

City of Durham
DURHAM WORK SESSION
September 17, 2019

A. OPEN WORK SESSION

Mayor Schirado opened an informal workshop with the City Council and Planning Commission at 6:30 PM

Emily Baker introduced herself to the City Council and Planning Commission as the City's new Administrative Assistant

B. ROLL CALL OF COUNCIL MEMBERS AND PLANNING COMMISSIONERS

Council Present: Gery Schirado, Chris Hadfield, Keith Jehnke, Leslie Gifford, Chuck Van Meter

Commissioners Present: Brian Goddard, Krista Bailey, Laurie Volm, Gary Paul, (Julie Atwood arrived later)

Commissioners Absent: Jeffery Anderson, Pat Saab

Staff Present: City Administrator Linda Tate and Administrative Assistant Emily Baker

C. DISCUSSION ON COUNCIL'S EXPECTATIONS FOR THE IMPLEMENTATION OF THE CITY'S TREE ORDINANCE AND LAND USE CODE AND GUIDANCE FROM COUNCIL ON TREE CANOPY MANAGEMENT VS. TREE PRESERVATION PER REQUEST FROM THE PLANNING COMMISSION ON JUNE 4, 2019.

Schirado opened the discussion by giving a background of the City Council's concerns over the Planning Commission's implementations of the City's tree preservation ordinance codes. He began the conversation by reviewing the Durham Development Code, Section 5: Tree Protection and Ordinance 228-05. He noted that they applied to all trees of a certain size and that there is no reference to "canopy." Looking at the "Tree Removal Application Process and Guidance" form, he asked the Planning Commission to explain their process and the guidelines they follow when hearing a tree removal request and what their consensus is based on.

Atwood explained the Planning Commission's process when hearing from an applicant at a meeting. Paul added, they first try to determine the type of permit and the criteria for it.

Schirado asked for clarification on Type 1 and Type 2 application processes. Tate explained Type 1 application can be decided administratively and Type 2 is decided by the Planning Commission. The Type 3 application process requires a hearing and is decided by the Planning Commission.

Schirado asked about the criteria the Planning Commission uses. Atwood explained they use a check list with the types of permits and criteria for each, then ask the applicant clarifying

questions and discuss the applicant's plans. Volm expressed an issue with the lack of requirement of plans and follow through on the plans that are presented at the time of the hearing. Schirado followed up by asking if plans were pertinent prior to making decisions or later when enforcing a decision. Volm said it is pertinent to both. Schirado then asked the Planning Commission about added criteria and timelines for applicants with plans.

Bailey said the assessment of the value for an individual tree, under the Ordinance, is subjective and mitigation is in alignment with the preservation of trees.

Atwood spoke of inconsistencies in approving trees with plans and timelines and shared an example. Planning Commission is asking for more guidance for grey areas in the Ordinance and City Council's expectations.

Goddard explained the variety of citizens and styles of mitigation and how there are case by case situations. He pointed out some people would rather pay a fine than go through the process associated with cutting a tree down legally.

Schirado read from the "Planning Commission Guidance for Tree Removal Application" outlining the structure and roles of the Planning Commission and the applicant. He then went into the possibility of coming together to find out where changes need to be made to make the process more meaningful and clear for the Commissioners and applicants.

Tate explained the ability to give a conditioned approval. Atwood expressed an issue with this due to possible financial burden on the applicant. Atwood also said the ordinance needs to be cleaned up in order to clear up misunderstandings.

Bailey talked about the seven criteria points in the Durham Tree Protection Ordinance 228-05. Three are automatic approval that fall under permit types A through D and the other four fall under a Type E permit. She said the four points require a level of subjective assessment. She stated the Planning Commission needs more guidance on those four points, emphasizing the point of economic benefit. Schirado asked for clarification on which points she was referring to.

Bailey said she believes point D is the most subjective in evaluating a tree because it is about character and beauty. She added that B is difficult to determine and the Planning Commission is not equipped to evaluate the topography under C.

Schirado asked the Planning Commission if they have discussed or come to a consensus on the definition of "economically beneficial manner." Atwood and Volm both said no. Tate gave background that the ordinance had been changed in 2005; replacing the word "reasonable" with "economically beneficial" for additional clarification at that time.

Schirado then asked if the Planning Commission was wrestling with the interpretation of “economically beneficial.” To which, Atwood said there are differences on the Planning Commission of what “economically beneficial” means. Goddard added the benefits of outdoor living spaces on property values and the benefit for residents to enjoy their property. He questioned if the Planning Commission is able to make a decision on what is and is not economically beneficial for a resident. Volm asked Goddard if realtors educate people about tree ordinances and Goddard replied that often times they do not.

Jehnke gave an example of Lake Oswego’s processes and ordinances for tree removal. He then addressed Bailey’s previous comment about preservation, saying the Planning Commission can look at the variety of trees on a property when making their decisions. Goddard said the Planning Commission has had conversations about the canopy, but the ordinance has a single tree focus.

Attwood expressed her concern of strict guidelines being placed on applicants and the Planning Commission’s decision making. Gifford asked Atwood about asking applicants for arborist reports, to which Tate responded that she requests the reports for the permit applications that require them. Jehnke asked about Type C permits, to which Tate replied most Type C permits are administratively approved and don’t require arborist reports. The Planning Commission sees Type E permit applications that do not require a construction permit, unlike Type C permits that do.

Bailey explained the Planning Commission only sees the applications of trees that don’t meet the requirements of the permit applied for or applications for Type E permits. She said she keeps in mind the time applicants have committed to the process. If they come prepared with a detailed package, it should be considered along with the criteria, which then creates a grey area in the assessment of the application.

Goddard asked Tate her process for Type 1 decisions. She explained how her processes vary based on the permit applied for.

Paul asked for clarification on the importance of tree species; noting Section 5 of the Development Code says “every tree,” but the applicant needs to provide the tree diameter and species. Bailey said they need some feedback on how to evaluate the contribution of different species of trees to the surrounding area.

Schirado said the City Council would be open to hearing suggestions for modifications in city documents that would make the Planning Commission’s job more efficient and easier to administer.

Bailey said she feels the tree ordinance is appropriately in place to preserve Durham's forested urban area, but there should be consideration of the balance between preservation of the old vegetation and urbanization. She suggested a bigger plan that addresses the overall ecology. Atwood mentioned she brought in an example of an Urban Forest Management Plan to a Planning Commission meeting, which Tate said city staff cannot handle taking that large chore.

Atwood asked for clarification on the goal of the Ordinance and guidance on mitigation to reflect this goal. Jehnke read the stated purpose of the ordinance as preservation and maintenance of trees and wooded areas.

Van Meter asked the Planning Commission how they make their decisions.

Atwood suggested modifying the requirements of mitigation, bringing up an example of her tree.

Jehnke asked about Atwood's tree being rotten on the inside and discussed root rot.

Goddard asked about the liability of the Planning Commission if they say no and a tree then causes damage. Jehnke replied the arborist takes on the liability, but it can be vague. Atwood asked about the ability of the Planning Commission to give an opinion if an applicant states the tree is dangerous. Van Meter said there is case law protecting officials. Tate pointed out a letter with the City's attorney's comments on the issue of liability. She also stated that most dangerous trees can have an arborist report stating that fact. She then gave an example of an arborist negating what an applicant said about the health of a tree.

Goddard brought up an example of an angry citizen and said the Planning Commission tries to be reasonable and follow criteria but emotions do run high.

Hadfield asked if a new process for tree removal applications should be created. Goddard replied issues in the current process should be alleviated instead of creating new processes. Hadfield followed up, saying clearer ordinances should lead to unanimous votes in the Planning Commission. Atwood agreed, but said there needs to be clarity in the overall goal of the city.

Atwood expressed frustration with the current process.

Volm said the Planning Commission needs help with setting up requirements for every applicant prior to getting a tree permit and a way to hold applicants accountable after they get the permit. She then gave an example of applicants with plans. Atwood questioned the extent of the Planning Commission's authority to look at alternatives for permits involving plans.

Bailey summarized the general question being addressed; saying the ordinance, code, and criteria do not intend to preserve every tree, but to give guidance. She asked for examples or clarity of what the City Council's expectations are of the Planning Commission on tree removals.

Hadfield replied to comments on the authority of the Planning Commission by saying citizens bought into the city of Durham, the ordinances, and the HOAs when they moved in, so the Planning Commission's right is in the Durham charter and ordinances. He said if the Ordinance was written clearer then the expectations of the City Council would be clearer as well. If it is unclear, then it is on the City Council to fix it.

Atwood replied saying the Planning Commission has to use a level of judgement and to consider alternatives, so she wanted to know to what extent they should look into alternatives. She then gave an example. Tate added clarification to the example Atwood was referencing. Atwood then asked if it is acceptable to ask a person to change their plans to protect a tree. Schirado replied that it is acceptable because the Planning Commission's job is to preserve trees and the economic benefit does not trump a tree in the decision making process. Gifford gave background on the Kingsgate neighborhood, pointing out the houses were built to accommodate trees, including building decks around them.

Atwood expressed her frustration with the City Council.

(Julie Atwood left the meeting)

Schirado asked the Planning Commission if there is more clarity needed from the City Council.

Jehnke went back to Bailey's question about the application of the Ordinance.

Bailey replied that the ordinance and code should be written in a way that allows it to be applied in case by case basis. She says there is an opportunity for the Planning Commission to understand the evolution, plan, and intent of the Ordinance better.

Schirado said the City Council recognizes and appreciates the Planning Commission's recent decisions based off of findings that support their decisions. Goddard pointed out the work Atwood did breaking down the process and putting clarity in the motions that have been made. Tate added the process and "cheat sheet" is available to all the commissioners. Schirado continued, saying making decisions on findings is critical in legislative opinions and eliminates what looks like arbitrary decisions.

Van Meter said the City Council gets public feedback when trees are cut down and thinks there needs to be more understanding on the definition of "canopy" and what they mean by "preservation of the canopy." Bailey said the intent is there, but the broader expectation of

how to help others understand how the Planning Commission is trying to preserve the canopy is not.

Tate explained how the tree selection in the mitigation process works.

Bailey said requiring mitigation is supporting the Ordinance, but the Planning Commission is not qualified or equipped to decide what trees hold more value for preservation. It was suggested to get an arborist report and Van Meter asked about the reports that are given to the city. Tate responded that the arborist reports she gets are for dead or dying trees or ones that have a condition that makes it dangerous.

Bailey said she would want the city arborist to give an opinion on the sustainable value of a tree that is not dead, dying, or dangerous but that a property owner wants to remove. Goddard gave an example of a recent applicant where they discussed the maintenance of a tree versus its removal.

Gifford asked about an example of mitigation for a Doug fir with a dogwood. Goddard gave another example of an applicant who changed plans instead of removing a tree. Tate responded to Gifford's question, saying more mitigation probably should have been required for that example. She added the Planning Commission always has the option of requiring more mitigation. Goddard gave more information about Gifford's example.

Tate asked about criteria point A in the Ordinance and tree proximity to existing structures. Jehnke said 5 ft., but Baily added that proximity can depend on the species of trees.

D. DISCUSSION ON NEXT STEPS

Schirado began wrapping the meeting up. He asked everyone if there was "to-do" take away for the Planning Commission or City Council.

Van Meter said the term "canopy" needs to be incorporated in the city documents.

Bailey said there needs to be clarity or guidance given on canopy management versus urban forest management and what should happen long term. Tate asked Bailey what format type she wanted that information.

Jehnke said maintenance of a full canopy is the goal. Tate noted looking at the entire canopy would not be logistically fair to individual property owners. Bailey added removing a tree may be beneficial, but it would not also be beneficial to replace a tree in the same spot. Jehnke said some trees are able to grow under others. Bailey asked about the mitigation fund. Tate explained how the mitigation fund is used. Goddard asked about tree planting in the park. Bailey said a tree's life cycle is important to consider as well.

Schirado said the implementation and realities of an urban forest plan have to be considered by the City Council.

Paul said balancing the maintenance of trees and canopy with a property owners rights is important, especially when considering criteria point B. Hadfield suggested taking out point B or substituting it with something else. Bailey replied that removing it would remove the subjectivity of a home owner's ability to make decisions on their property. Tate added, sometimes it is just landscaping and gave an example. Paul said it sometimes is for outdoor living spaces. Brian expanded on the example Tate gave.

Paul asked about the benefit of tree species.

Jehnke asked about what would happen if someone came in with plans that required removing a tree. Volm agreed the tree removal would be approved. Schirado asked a follow up question. Tate explained. Jehnke talked about Lake Oswego and Portland.

Volm said more clarity and consistency would be helpful.

Paul talked about a submittal package from an applicant that Volm had mentioned earlier. Volm wanted a package with proof of a plan and accountability for follow through.

Tate said there has been a learning process during the previous six months.

Goddard added the idea of a canopy should be integrated and the list of trees for mitigation may need to be pared down. He said there should be a balance of people enjoying their property and peacefully living in the city they pay taxes in, and that it would be helpful if everyone had a package and was prepared for the meetings. He talked about how some people don't know the Ordinance even though they have lived in Durham for years and brought up an example, which Tate expanded on.

Tate said the applicants are now given a list of questions that they answer prior to being put on the agenda and the Planning Commission gets these answers as a cheat sheet with the criteria.

Hadfield said the Park Survey showed a big reason people move to Durham was for the trees and people get upset when they are taken down. He said there has to be some latitude but the main goal is to save the trees.

Schirado said he is an advocate for trees. He would like to see additional guidelines on preservation and canopy management. His message to the Planning Commission was for them to stay as close as they can to the guidelines they have, meaning trees first. Then utilize their judgement to adjudicate the situations.

E. ADJOURN - Mayor Schirado adjourned the meeting at 9:00 PM

Approved:

GERY SCHIRADO, MAYOR

Attest:

LINDA TATE, CITY ADMINISTRATOR/RECORDER