

City of Durham
PLANNING COMMISSION MINUTES
October 1, 2019

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

Commissioners absent: Jeffrey Anderson

Staff present: City Administrator Linda Tate, Administrative Assistant Emily Baker

Public present: none

3. PLANNING COMMISSION MINUTES. Commissioner Saab moved to approve the Planning Commission minutes from July 2nd, 2019. Commissioner Paul seconded the motion. Vote was unanimous (5-0) **MO 100119-1**

4. DURHAM WORK SESSION MINUTES. Commissioner Bailey said she was unable to read through the minutes, but believed they were good. Chair Goddard moved to approve the Work Session minutes. Commissioner Volm seconded the motion. The vote was unanimous (5-0)

MO 100119-2

5. PUBLIC FORUM. None.

6. TREE REMOVAL APPLICATION. Chair Goddard opened the discussion on the tree removal permit application for 17865 SW Upper Boones Ferry Rd. Tate gave background on the applicant and application. Two trees were approved in July (one was dying and one was in the footprint of permitted construction). In September, the property owner applied for two more permits. Tate was able to approve one of the permits because the tree was diseased. However, the second permit was for a tree that was damaged by the construction on the lot and it is the tree she requested they protect and save during a pre-construction meeting in July. Councilor Jehnke gave his opinion as an arborist via written comments. He said the plans provided did not appear to be accurate for the locations of the trees. He stated that the tree could have been saved if the proper measures were taken, but it did not appear that any precautions were taken to protect the roots of the tree during excavation. Tate said she invited the applicant to attend the Planning Commission meeting, but he made it clear he would not attend and stated he would litigate if the City fined him. Chair Goddard made some observations on the situation. Bailey asked if the construction for the addition to the house is permitted and Tate responded that it is.

Commissioner Paul asked if Tate had any documentation of her request of protecting the tree. Tate said she does not, except for the fact that the tree removal application submitted after that meeting in July labeled that tree as "stays." Commissioner Volm added, the Ordinances and Codes are in place and he has violated them and the contractor knew he had to protect the tree if it was to stay. Commissioner Paul said he has not violated the Ordinance if the tree is still standing. Commissioner Bailey asked about the tree removal permits for the other trees on the property. Tate said a total of four permits were submitted fully and she approved three of them.

Chair Goddard stated he had an issue with the applicant not showing up to the meeting and that from the evidence the applicant caused the tree to be top heavy due to excessive trimming, had inaccurate plans, and damaged the roots during excavation. Commissioner Volm agreed with Chair Goddard and said she thinks the applicant should mitigate the tree and pay a fine because of the damage he caused to the tree. Tate explained a conversation she had with the

applicant on the phone about the state of the tree as a result of its heavy pruning. Chair Goddard said he is usually on the side of home improvement projects, but in this case, the applicant did not handle the tree properly and caused it to become damaged. He asked about the residency of the applicant. Tate said he lives in Tualatin and he is renovating the house for a business. Commissioner Volm said it is untasteful to threaten to sue. Chair Goddard said, referencing the Work Session with the City Council, that this is a clear example of the Planning Commission needing to uphold the codes and ordinances of the City. Commissioner Paul added that the applicant did not do what he was supposed to do and that he is responsible for paying a fine and mitigation.

Chair Goddard asked about a second driveway on the property. Tate said the previous renter added a side driveway in an improper location, so that driveway will be removed. However, she requested the applicant vacate the driveway on SW Upper Boones Ferry Rd per the City's Circulation Plan and build a new one on Peters Rd that will lead to the garage.

Commissioner Volm said she thinks the applicant damaged the tree and now it has to come down so he should either mitigate two trees and pay a \$250 fine or mitigate one tree and pay a \$500 fine. Commissioner Paul asked why she is recommending a lower fine, and Commissioner Volm said it was because the applicant is threatening to sue and she wants to show they are trying to work with him. Chair Goddard stated he is okay with the higher fine because the applicant is threatening to sue the City and he is not present to plead his case for a lower fine. Commissioner Volm asked which code that the applicant is violating. Bailey said it is Section 8.2 of the Ordinance. Commissioner Volm followed up asking if he owns any other property in Durham, to which Tate responded he does not. Chair Goddard read Section 8.2 as a finding and Tate pointed out that Section 1 of the Tree Preservation Ordinance has a definition of "Cut," which states that it includes anything that has the natural result of causing substantial destruction of the tree. She said therefore, the City Attorney stated that this applicant would fall under Section 8.1; a person causing or allowing a tree to be cut without a current, valid city permit or who girdles or tops a tree.

Commissioner Bailey asked what is expected of the Planning Commission at this meeting. Tate said she wanted them to state their findings and make a recommendation to the Council. She would like to take the recommendation to the City Council to get their final decision.

Chair Goddard stated the findings were as follows:

1) Ordinance 228-05, Section 1 provides the definition of "Cut" as "to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree." The Planning Commission finds that the property owner has caused substantial destruction of the tree and therefore has "Cut" the tree.

2) Ordinance 228-05, Section 2.3 states "no person shall Cut a tree without first submitting an application for and obtaining the City's permission." The property owner did not get a permit prior to causing the tree to be "Cut," and therefore the Planning Commission finds that the property owner is in violation of the Ordinance.

3) Ordinance 228-05, Section 8.1 states "a person who causes or allows a tree to be Cut without a current, valid city permit or who Girdles or tops a tree commits a Violation for each tree so Cut, Girdled, or Topped." Therefore the Planning Commission finds the property owner committed a violation for this tree.

4) Ordinance 224-05, Section 6 states “a violation of a city ordinance shall be a Class A violation and shall be punishable by a fine not exceeding \$720 for each violation in addition to any other penalties provided for in that ordinance.” Therefore, the Planning Commission finds the property owner is subject to this fine.

Commissioner Volm said they should add mitigation of a like tree on the property. Commissioner Paul agrees with the fine and mitigation. Commissioner Bailey asked if they need to confirm their reasoning. She explained the Planning Commission reasons for their recommendation. Tate said they can state their approval of the tree removal and that he has to pay a fine and mitigate. She then noted if it goes to court, the fine would be “up to \$720.”

Commissioner Saab said the applicant admitted to the roots being damaged during the excavation process.

Commissioner Bailey said she was sensitive to appearing compliant with the ordinances rather than to have made the decision based on an emotional reaction. She said if the applicant had gone through the proper process in the first place they would have come to the same decision of saving the tree. Chair Goddard added, the applicant damaged the tree and is now using the damage he caused as evidence as to why it should be cut down.

Commissioner Volm added that she does not like being threatened with legal action before a decision is even made and Chair Goddard said his decision is partly based on the fact he is threatening to sue in lieu of coming to the meeting. Tate added, based on the pictures, he could have saved the tree if protective measures had been taken. Commissioner Bailey said the proper process would have been to review the plan and discuss implementing protective measures and she wants to make sure their recommendation has solid support behind it from the Ordinance. Tate said the applicant did not have permission to cut the tree down and now that he has damaged it to the point of needing to be removed, he is in violation of the Ordinance per the definitions of the Ordinance. Chair Goddard said the situation would have been looked at differently if he had gone through the proper process to remove the tree in the first place. Commissioner Volm said they probably would have come to the same conclusion, just without the fine. Commissioner Saab added Councilor Jehnke also supports the conclusion that the tree was damaged due to the negligence of the applicant.

The Planning Commission recommends the mitigation of one tree and a fine up to the full amount of \$720. The vote on the recommendation was unanimous (5-0). **MO 100119-3**
Commissioner Bailey stated their recommendation will be given to the City Council who will make the final decision on the matter.

7. DISCUSSION ON TREE PRESERVATION ORDINANCE. Tate asked the Planning Commission what thoughts they had on the Work Session on Sept. 24th, 2019 and if they had any next steps they wanted to take. There was no feedback from the Planning Commission on the Work Session.

8. COMMISSIONER COMMENTS / REPORTS / STAFF UPDATES. Chair Goddard brought up a concern he received from a resident about a fence along the Heron Grove Park that is becoming dangerous. He explained the property the fence is on and the concern of children’s safety around it. Commissioner Saab asked for clarification about which house he is referring to and Commissioner Volm asked about the fence and the owner of the house. Chair Goddard said the person who lives there does not go out very often and the resident with the concern has gone up to the house and knocked on the door with no response. Commissioner Paul asked if

there was a city ordinance surrounding fences. Tate said the only regulation is a 6' height limit. Tate said she told the resident the City cannot do anything about the fence. Chair Goddard said parents assume the risks involved with allowing their children to run between the fences.

9. ADJOURN. Commissioner Volm moved to adjourn the meeting. Chair Goddard adjourned at 8:25 PM

Approved: _____
Krista Bailey, Vice Chair

Attest: _____
Linda Tate, City Administrator