

TREE COMMISSION MINUTES

December 15, 2015 - 5:30 P.M.

PARKS AND RECREATION HEADQUARTERS

MEMBERS

X	Dr. Maurice Holt, Chair
X	Terry Plauche, Vice-Chair
X	Ben Cummings, Secretary
X	William Rooks, Treasurer
X	Dr. Rip Pfeiffer
	Cleve Formwalt
X	Jesse McDaniel

STAFF

	Urban Forestry	Gerard McCants
	Alabama Power	Blake Jarrett
X	Planning	Richard Olsen
X	Legal	Melissa Mutert
X	Planning Secretary	Lisa Watkins

The Chair called the meeting to order and noted that there was a quorum. He also wished to express appreciation to the Mayor's office for the informative ride-along that showed the Board members some of the prospective things that are planned in the coming years.

TREASURER'S REPORT: A motion was made by Mr. McDaniel and seconded by Mr. Cummings to accept the Treasurer's report with a balance of \$10,454.57 and no activity.

HOLDOVER REQUESTS:

1	<p>P-2015-21 Mayor Stimpson 5709 Shain Street Remove three Live Oaks</p> <p>The Chair acknowledged Mr. Colby Cooper and asked if Mr. Cooper was there to represent the application.</p> <p>Mr. Cooper stated that he was present to observe the meeting and that the law states clearly what should transpire.</p> <p>The Chair reviewed the request and stated that it really didn't fall under their purview.</p> <p>Dr. Pfeiffer replied that it did fall under their purview as the request was to remove trees in the right of way in the City of Mobile.</p>
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Mr. Cummings stated that the last three lines of Section 9 reads “and the Commission shall approve the same....” He asked why the Tree Commission was involved if the Mayor has the authority to remove the trees.

Ms. Mutert stated that the request was probably put before the Tree Commission as a courtesy. She continued to say that “shall” is mandatory language, and she and Mr. Olsen had discussed that even though the request was packaged as an application, it really is not. It is a certification, and that is all that is required. In the future, if the Mayor’s office certifies an item on the agenda, it will be listed under “Other Business” as informational and not as an application.

Dr. Holt asked her to clarify that “shall” means the Tree Commission has nothing to do with it.

Mr. Cummings stated that he wanted it made very clear because in their discussions, it seems that most of the members of the Commission are not in favor of these trees coming down. They certainly do not want to establish a precedent by allowing these trees to come down. So, when they are told that by law that they shall approve this, they are only approving the Mayor’s authority under Section 9. He did not want to say that they are approving removal of the trees.

Ms. Mutert stated that it said “shall approve the same” and that is basically that they are approving the Mayor’s certification and not making a decision of any kind.

Dr. Pfeiffer stated that the Mayor has obligations and read that “it may be reasonably necessary to do so to prevent a public hazard or to provide efficient or economical service to the public.” He stated that in order for the Mayor to be able to approve this it has to fall under this category and, according to the staff report, they gave no reason to have these trees removed.

The Chair stated that it boils down to setting a precedent for preferential treatment.

Ms. Mutert stated that the Mayor has certified that, in his opinion “that is it reasonably necessary to do so to prevent hazard” or to “provide efficient economical service,” so there is no decision for them to make.

Mr. Olsen stated that the Mayor’s certification was included in the staff report. The Mayor’s certification stated “the need to remove three live oak trees in the right of way on Shain Street for public safety, and/or convenience, and to provide efficient and economical service to the public.”

Mr. Olsen further stated that once the Mayor makes such a certification, it is not his place to question the certification. It is his place to prepare a report that tells the Commission members that the Mayor has certified the removal and recommend that the permit be issued based on that certification.

Mr. Plauche asked Ms. Mutert if the Mayor has any responsibility or culpability for what he certifies.

Ms. Mutert stated that the Mayor doesn't answer to anybody here. It is his Mayoral authority to provide this certification by State legislation.

Mr. Cummings asked what would happen if there were no motion made, seconded, or voted on to approve the certification. He asked if they would be in contempt of the law if they didn't approve this or took no action.

Ms. Mutert stated that the by-laws say that if there is no activity, it is deemed to have passed.

Mr. McDaniel replied that it says the opposite.

Ms. Mutert stated that in the appeals process it says that there is no appeal for such approval except as provided in Section 10. Section 10 is the normal appeals process. The issue there is that any person aggrieved by any decision of any officer or agent of the Commission to whom its duties are delegated or of any decision of the Commission may appeal to the City Council. In terms of legal standing, she honestly didn't know who would have legal standing. Generally, the person who is personally affected by it would have legal standing, not a member of the general public or the Commission.

Dr. Pfeiffer stated that the trees are part of the infrastructure of the City of Mobile, and therefore, if you are a citizen, you are affected.

Ms. Mutert replied that is a legal theory that could be proposed, but generally, you have to be the person aggrieved to have a legal standing.

Mr. Olsen asked if the person to call would be the Council attorney.

Ms. Mutert replied that it could be the courts, if it got challenged as this was one of those things that might work its way through the system to determine who has legal standing.

Mr. McDaniel asked approximately how much it would cost for the City to remove these trees and plant new ones.

Mr. Olsen stated that it was considerably less for the City to do it than hiring a tree company to remove it. He thought that it was between \$300-\$500 per tree for a simple removal.

Mr. Cummings stated that he didn't like the position that the Tree Commission had been placed in. He does clearly see what the law says.

Mr. McDaniel made a motion that since this was referred to as an application that, in accordance with their by-laws, they hold a public hearing on this application and that the decision be heldover until after the public hearing.

The Chair asked if there was a second to Mr. McDaniel's motion.

Mr. Olsen pointed out that this meeting of the Tree Commission is a public hearing. Property owners were notified.

The Chair agreed that the Tree Commission is between a rock and a hard place. The language in the legislation stated that they "shall" approve something that the Board is not in favor of.

Mr. Cummings stated that they are not approving the removal of the trees, they are approving that the Mayor sent a certification with his authority to do this. Therefore, they are not setting a precedent. He felt like the Tree Commission was not being treated respectfully in this matter. They are being treated with a heavy hand, and he wasn't happy about it. He stated that a motion had been made, but it has not been seconded.

Mr. McDaniel restated his motion.

Mr. Cummings replied that the current meeting is a public hearing.

Dr. Pfeiffer seconded Mr. McDaniel's motion, stating that he thought this was a public meeting, not a public hearing. He stated that public hearings on important issues are publicized, and he bet that not 10 people in Mobile knew that the Tree Commission met at this time.

Mr. Plauche asked to what end did they propose having a public hearing. He stated that the law said that they had to approve it.

Ms. Mutert interjected that this is a State law. If their problem is with the law, a public hearing would serve no purpose; instead, they should contact their legislator. The City is abiding by State law.

Mr. McDaniel stated that his motion to hold the application over until after a public hearing was held was seconded. Dr. Pfeiffer repeated his second.

	<p>Mr. Olsen stated that he disagreed that this meeting was not a public hearing. He continued to say that if they were going to hold another public hearing, assuming it would be held before the members of the Tree Commission, they needed to establish a date and a location.</p> <p>The Chair stated that as a point of order they needed to vote on the motion, and then they could establish a date and location.</p> <p>The motion failed with Mr. Plauche, Mr. Cummings, and Mr. Rooks in opposition.</p> <p>Mr. Cummings made a motion that, pursuant to Section 9 of the State Code, the Commission approve the Mayor's certified letter. The motion was seconded by Mr. Plauche. Mr. Cummings stated that he wanted to follow the law and approve the Mayor's certification, but he wanted it made clear that the Tree Commission does not agree with the removal of the trees.</p> <p>The motion carried with Mr. McDaniel and Dr. Pfeiffer in opposition.</p>
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PERMIT REQUESTS:

<p>2</p>	<p>P-2015-22 City of Mobile Portions of St. Stephens Road, Clinton Avenue, Andrews Street, Donald Street, Alison Street, and Gloria York Avenue Remove a total of 19 trees of various species for a sidewalk project</p> <p>Nick Amberger stated that Fred Richardson requested this project for sidewalks to be added throughout this community. It is being funded by a \$550,000 block grant. So far, they have acquired over 20 easements that are being provided by property owners so as not to disturb the trees. They have hired a consultant to handle this project and will re-submit drawings, so they aren't asking the Commission to decide on it today. This is one of the projects they saw on the Mayor's ride-along. The Mayor asked him to re-visit some of trees, and he was able to accommodate some and not others. They can't encroach on the business parking. Where they could get clear title on private property, they did. There is a big strip along the school board property, and so they were able to get farther back from the road there than a typical sidewalk. In most places, the sidewalk is a comfortable width; in a few places, they had to go down to the ADA minimum requirement. Due to their having to revise the drawings to accommodate the recent changes, they</p>
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are requesting a holdover until the next meeting.

Dr. Pfeiffer asked if all the neighbors in the area are aware of the trees being removed.

Mr. Olsen reminded the Commissioners that they had voted a while back to send public hearing notices to property owners adjacent and across the street. Staff has been doing that for a few months now, and we haven't heard from anyone.

Mr. Amberger stated that when trees are on the curb, instead of going up through the neighbor's porch, they shrink the curb lines. Instead of having an 18" gutter, there may be a 6" gutter. This won't carry stormwater as well as they'd like it to, but in those cases, that extra 6 or 12" may allow them to put an ADA compliant sidewalk (36" minimum for a wheelchair) in there. It may require trimming of some roots. They tried to make some common sense decisions. In cases where there is the possibility that a sidewalk may buckle in the future, they may add steel so that it all moves together.

Mr. Cummings stated that after he went on the Mayor's ride-along, he went back to his office and googled how municipalities deal with the coexistence of trees and sidewalks. There have been many municipalities who have written reports about how to deal with it. From the reports he read, it is evident that it is easier to deal the coexistence of trees and sidewalks when the trees are young and you can deflect roots. He didn't see any solutions on how to deal with mature trees. He acknowledged that there are ways to build sidewalks where the trees can coexist.

Mr. Amberger said that the challenge that they ran into is that where title to a property wasn't clear that there wasn't anything they could do. But, they have spent the last four months pursuing every avenue they could. Mr. Amberger introduced the consultant hired by the City, Shane Sawyer of HMR. He added that the City Council added over \$2 million dollars in the CIP programs for sidewalk repair.

Mr. Cummings asked why the City is repairing sidewalks when the code says that sidewalk maintenance is up to the adjacent property owner.

Mr. Amberger stated that just because it's in the code that the adjacent property owner maintain them, it doesn't prevent the City from doing sidewalk repair. In fact, the City repairs sidewalks all the time. It's out of hand, and there's an impossible number of SRO's. All he's been able to do is put geographic areas together for the City's contractors and tell them that when they go to a particular area in town to fix everything in there. There are so many places in town where you can't walk from one end of the block to

	<p>the other without the sidewalk being distorted.</p> <p>Dr. Pfeiffer said that we shouldn't lose perspective; trees are an integral part of urban design. They reduce air conditioning costs, stormwater runoff, increase property values and provide enhanced curb appeal.</p> <p>Mr. Amberger replied that everyone would agree with that, but Mrs. Jones wants to walk her child down the sidewalk and she can't do it. When people come to Engineering for a right of way permit, they encourage people to plant the right tree in the right place. That wasn't done in the past. It is a tough balance, but people do want to walk down the sidewalk.</p> <p>The Chair asked if the residents were sent notification letters on this application.</p> <p>Mr. Olsen replied that the letters were sent by staff.</p> <p>The Chair asked for confirmation that there were no responses from the letters sent.</p> <p>Mrs. Watkins replied that out of 40 letters sent, one phone call was received.</p> <p>Mr. Amberger stated that they have made personal contact with property owners to get easements from them. So, not only did they get a notice, but they had a real estate person sit down with them and explain why the sidewalk easement was being requested.</p> <p>Mr. Olsen stated that the Council person has mentioned this project in his newsletter as well.</p> <p>Mr. Plauche made a motion, seconded by Mr. Cummings, to hold the application over to the January 10th meeting.</p> <p>The motion carried unanimously.</p>
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OTHER BUSINESS

- Dr. Holt and Dr. Pfeiffer discussed concerns about if people really read or simply discard the public hearing notices send out regarding the Tree Commission meetings. They feel that with a project the size of the above referenced sidewalk project that citizens will be upset when the trees are cut down.

Mr. Cummings asked if the 2:1 replacement ratio came into play in a project like this where 19 healthy trees are being removed.

Mr. Olsen stated that the Tree Commission has both enforced and waived that ratio, and it was up to the Commission members to make that determination.

Dr. Holt asked if there was any further discussion.

Mr. McDaniel replied that he thought that there was a conflict regarding what a public hearing is. He was also concerned about whether letters of certification from the Mayor should be handled under "Other Business" simply like a pass-through or if indeed they were "applications" per the State Code.

Ms. Mutert stated that, unfortunately, laws are not always artfully written, and that is what they are dealing with. The State Act was initially passed in 1961, modified in 1983, and modified again in April of 2015. There are a number of people involved working on them which brings about different language. She and Mr. Olsen had discussed that there is no appeal other than the standard appeal. She thought that if they had issues with the Code, they should talk to other people. She suggested that they start with Mobile County Representative Pringle.

Mr. McDaniel stated that in the Code there is a reference to an appeals process under Section 10 that he isn't clear about as far as rules that may be adopted by the City Council on how to appeal, and he'd like to know about that.

Ms. Mutert stated that they were just given this authority, and there may not be any rules yet. It will probably be assigned to a committee to develop.

Mr. Olsen added that he assumed that it would be similar to the rules that they have for appeal of Planning Commission applications which is a 15-day appeal period, then 15 days for staff to get the information to them, then 15 days for them to hold the Public Hearing. This is the same process that they use for the Architectural Review Board, and it is a pretty standard process. He further stated that he would check with Mr. Rossler to see if the Council had developed that process.

Mr. Cummings asked if the Commission could appeal a decision of the Tree Commission.

Ms. Mutert said that is again problematic and may need to be addressed with their legislator because read broadly, the Act states that "any person aggrieved by the decision", it doesn't specifically state that the right to appeal is that of the person whose application was denied. She felt sure that there would be legal challenges to an appeal if any private citizen who wasn't the applicant filed an appeal.

Mr. McDaniel stated that this Act handcuffs the Tree Commission, and he felt like it went against what they were there to do in the first place.

- Discussion of need for amendments to By-Laws and Standing Rules
 - * Request by citizen to include a maximum time to comply with replanting requirements.

Mr. Cummings requested that the discussion of amendments to By-Laws and Standing Rules be tabled until the next meeting.

Mr. Olsen replied that there are there are amendments needed to comply with code or to resolve things that conflict with code, and some things are needed just for clarification. Ms. Mutert has pointed out some other needed amendments to him, and he will be working on those as well. He suggested that the Board members take copies provided home to review and email him if they had any questions.

ADJOURNMENT

With no further business, a motion was made by Mr. Cummings and seconded by Mr. Plauche to adjourn the meeting.

The motion carried, and the meeting was adjourned at 6:37 PM.