

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
June 7, 2021
6:00 p.m.

Members Present: Councilwoman Sara Byrnes Maier, Chairman
Councilwoman Lydia DeGeorge
Councilman Peter J. Winzig

Also Present: Mayor Koomar
Law Director Mark Barbour
Building Director Eric Tuck-Macalla
Director of Public Service and Properties Jon Liskovec
Finance Director Mahoney
President of Council Clark
Councilman David L. Tadych
Councilman Tom Kelly
Councilman Mike Greco

Audience: Richard Fink, Sam & Connie Fester, Ed Smith, Charlie Post, Robert Petkash.

By Zoom: John Ross, Bernadette Power, Jim Strunk, handsforhealing, Claire Banasiak, Debra Jesionowski.

Ms. Sara Byrnes Maier, Chairman of the Planning, Zoning, Public Buildings and Grounds Committee, called the meeting to order at 6:00 p.m., thanking everyone in attendance for coming to the meeting this evening. Ms. Maier introduced the other two members of the committee, Councilwoman Lydia DeGeorge and Councilman Peter J. Winzig.

Tree Ordinance

Ms. Maier stated that at the last meeting, May 26, 2021, when the committee talked about the tree ordinance it was a joint work session with the members of the Tree Commission regarding the proposed adoption of the tree ordinance that they had drafted. For a point of clarification, things are being kept the same as they were in their original draft language. The conversation with the Tree Commission included the topic of education and what belongs in the ordinance, versus outside the ordinance and in other supplementary materials. It was a very productive conversation, and there will be follow up on that. Mr. Winzig has put together some good materials using the comments from the last four meetings. The goal is to get this ordinance out of committee and move it up to the Council of the Whole Committee.

Mr. Winzig stated that the first five pages of the document he shared with Ms. Maier is the current draft of the ordinance received from the commission. He tried to extract that content and drop it into the new draft. The new draft begins on Page 6. The working title is Tree Maintenance, Preservation, Landscaping. It does not include any formatting, which can be fixed

once the content is reviewed.

The first series of bullet points are a combination of the maintenance and preservation conversations that were had. The overall preservation is tree and shrubbery content within the City and the concept of maintaining what we can every place appropriate. The very last is to promote public health, safety and welfare through preservation and replacement of trees with reasonable development of lands in such manner subjective to policies.

Letter B (1) this section talks about trees having a minimum of a six inch diameter breast height (DBH). This is used throughout a lot of the documents. The question for the Tree Commission or the Arborist is whether that is the right size. In other communities, different measurements are seen. Ms. Maier stated that she believes the correct size is the eight inch diameter breast height (DBH).

No Build Zone (NBZ) Mr. Winzig stated that he does not know if there are any No Build Zones within the City. He noted that Tree Preservation Site is another term that is used in other documents. Those could be identified, i.e., the lakefront trees, trees within Riparian areas, or areas within public space that could be designated as a preservation zone. At this point we do not have any.

No. (B) 2 is that the tree preservation subchapter shall not apply to sites which have previously approved final development plans, final plat, or a certificate of zoning compliance or other similar final approval by the City prior to the date this provision takes effect.

Definitions are on the beginning of Page 7. The arborist team and the Tree Commission have been asked to review these to see if this is a combination of something we had such as the No Disturbance Zone.

Ms. DeGeorge stated that in regard to the Critical Root Zone, what she was able to find is that there were some generalities on it where you take one and a half feet multiplied by the diameter or the circumference which equals the critical root zone. Is there a reason we stayed away from a formula?

Mr. Winzig stated that there is a formula included. It says having a radius equal to one foot for every inch of diameter breast height.

Ms. DeGeorge asked if we do not do the general definition multiplied by one and half feet?
Mr. Liskovec stated that as it currently stands, we do not.

Mr. Winzig asked Mr. Liskovec if there is much difference between the determining caliper and the drip line of a tree. Is it meant to be something different?

Mr. Liskovec stated that there is no difference in ideal conditions. Mr. Winzig asked if it is worth including the definition. Mr. Liskovec suggested leaving the definition in for those who may want to use it as a resource in learning more about trees.

Mr. Barbour stated that usually terms that are in the ordinance are the ones defined. Mr. Winzig stated that it comes up in the commercial section.

Heritage Tree – Is there any tree listed as a Bay Village or State of Ohio protected tree? Mr. Barbour stated that the definition states that any tree that is deemed critical to be preserved for its historical or longevity is a Heritage Tree. He suggested that it needs to include who would deem that to be the case.

Protected Tree – A protected tree is based on size, or has been designated by the City to be of high value to the City. There should be thought about what person within the City would so designate a tree as a protected tree, or have a process in place for designation of a protected tree.

Mr. Winzig stated that Page 8 includes a reference to Utilities/Utility Lines. One of the questions he was thinking about is that there is the work that is done by utility companies, such as water, gas, sewer, electric. Then there are other services such as cable or potentially 5G. Does it need to be both traditional utilities and non-traditional utilities? Should a sprinkler system or a dog protection system be included because they may impact a tree? It would not have an impact to City property, because those types of property enhancements are usually on the residential side.

Mr. Barbour stated that the word “utility” should only be used in reference to public utilities, or a private company that provides a service to a resident that is regulated in some way. Cable lines, irrigation systems and invisible pet protection systems would not be public utilities. Those would require a different definition.

Beginning of Page 9, Section 547.03 Tree Maintenance & Protection of Trees- Many of the statements from the current 547 draft are weaved into a series of statements about Trees on Public Property regarding spraying, fertilizing, planting on public street right-of-way, cutting or damaging a tree, placing anything upon the tree, protection of the roots, the idea of changing the drainage, and no person without written permission shall attach any electric wires, excavation or construction, and then liability for damages.

Ms. Maier stated that we were comfortable with some of the language that was in the draft ordinance. She stated that she is wondering if there is a need to dial it back to where we were before to the things we had talked about with Heritage Trees and some maintenance and trimming. There are a lot of additional definitions and changes to the existing pieces of the ordinance that have been working pretty well thus far.

Mr. Winzig stated that he thought it would be helpful to separate public property from private property. This would provide more ease for the residents when they look for information on their property. There would be guidelines rather than trying to write it and then say, excluding residential property. Beginning on Page 10, it is written for private property trees.

Mr. Barbour asked Mr. Winzig why he selected the term of five years after damage for claims no longer can be made for damage in the Trees on Public Property, Section (i) Liability.

Mr. Winzig stated that it was conversation he saw in another ordinance, either Mecklenburg or Dublin. In addition he noted the sentence that reads “The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this article.”

Mr. Barbour stated that he would rather not include a City statute of limitations for damage claims. Ohio has a whole body of law in the revised code or common law determination of the revised code that dictate the statute of limitations or time limit in which you can claim damages. Mr. Barbour would not want to draft a City ordinance that indicates a statute of limitations.

Mr. Barbour stated that he would have to think about whether you could create jointly and severally liability by ordinance. There is a whole body of law on that. Currently a homeowner assumes liability when they hire a contractor that does damage to property. It depends on the circumstances.

The reference in Section (i) that states “having all or any portion of its trunk in or upon public property” implies that it is partly the property of the private property owner and the City.

Ms. Maier stated that she is having a little trouble bouncing between this version and the last version of the committee with edits that had been made, based on how the committee went through each section. There are some minor differences that might have more than minor implications in changing some of the language. Ms. Maier asked Mr. Winzig if there are any other major changes that he put into his version.

Mr. Winzig stated that the next session on Page 10 is Trees on Private Property. He tried to pick out some of the same language in Sections (a) through (e). Letter (B) is the question about Boundary-Line Trees which had not been resolved last time. In the event there is a boundary-line tree, do they equally share the removal of the tree if it is removed?

Ms. Maier stated that she thought the committee had agreed on “jointly responsible” for that question.

Mr. Winzig stated that it did not define who pays what amount. Everybody is responsible but who pays what. Mr. Winzig thought “equally share in the removal of the diseased tree and its contents” would be a way to define the responsibility.

Ms. DeGeorge cited the example of damaged branches being clearly all on one property with the trunk on another property. If we don’t say “equally” and say “jointly” there is a potential for disagreement.

Mr. Barbour asked about the argument if it costs \$2,000 to take down a tree and it is 10% on one property, and 90% on the neighbor’s property. If it is “equally” each person would have to pay \$1,000. The way it would work in other circumstances if jointly and severally liable the City cites for tree removal that costs \$2,000 and can obtain the \$2,000 from either of the owners in full and the other owner can proceed to recover the rightful balance from the co-owner. The

whole purpose of this section is so the City is not caught trying to determine who owns what and what is fair, if you say “jointly and severally” rather than equally. If equally, and it costs \$2,000 to take down a tree one of the owners can say, well, here is my \$1,000 and the other homeowner refuses to pay or can’t pay.

Mr. Barbour noted the importance of identifying the underlying goal that is trying to be reached in writing language.

Ms. DeGeorge asked who makes the determination about the percentage on each property.

Mr. Barbour stated that jointly and severally means the money can come from either of the owners, either the full amount, or either owed. Then they would have to maintain an action of some kind to the co-owners. This all presumes where there will be costs incurred to remove or trim a tree.

If the property owner does not address a diseased or damaged tree, the City will do the work or removal necessary and then assess the property owner for the cost incurred. How do we determine who gets assessed what amount? If you make them co-owners jointly and severally responsible then the City doesn’t have to do a calculation of any kind. The full amount can be recovered from either one. Then they negotiate between themselves for the cost.

Mr. Winzig asked Mr. Liskovec if there has been cases such as those described regarding neighbors ownership of trees.

Mr. Liskovec stated that there have been issues where there is a tree that is split on a property line. The point of discussion is the percentage on each side. It usually requires a boundary line survey to determine where the boundary line is, which is an additional cost.

Ms. Maier stated that this should not be the City’s responsibility to do that; it should be the homeowner’s responsibility. There are two components. How to give direction to the homeowner, and how do you also make sure that the tree is taken down.

Mr. Barbour stated that currently the City would take the tree down. Once all the work was finished the City would take the matter to court and let the court decide based on the evidence. But, when we do those things the burden of proof is on the City, not upon the homeowner to determine who owns what. The purpose is that when you are in the street talking to the two property owners to say there is some leverage here you need to act, and not have them fail to act by pointing fingers at each other. He noted that this does not happen often.

Ms. DeGeorge stated that there are those situations where residents argue about whose tree it is.

Mr. Barbour stated that the City does not get involved in any kind of boundary dispute.

Ms. DeGeorge asked if it is rarely that the City has to go in and remove a tree on private property.

Mr. Barbour stated that this is correct. It will happen, but the last one was removed eventually

by the homeowner. In that case it was not a joint property tree.

Mr. Barbour stated that his thought process is that this has to come up, and why wouldn't other cities have a boundary tree ordinance. Would they not have thought of it also? Are we the very first ones to think of it?

Mr. Barbour's suggestion is to use the language "jointly and severally" otherwise there will be problems determining what equally means.

Mr. Winzig referred to Letter (C) Approval to Plant Trees in Public – adding Right of Way.

The current language says "Public Streets." We do not plant trees in streets.

Subsections (a) through (e) were picked up from what was previously reviewed. Subsection (f) "The City may cause the removal of any existing tree in the right-of-way that does not conform with the Master Street Tree Plan."

Section (J) Authority of Public Service Director. This section was in earlier in the document from the Tree Commission.

Section (K) Tree Maintenance has the requirement that all property owners and contractors adhere to ANSI A300 standards for tree maintenance. Subsection (b) talks about non-invasive tree species such as those found in the Bay Village Tree Preservation Plan. This is a placeholder because we currently do not have a Tree Preservation Plan. The Tree Commission said they may draft something like that. The words "and/or the Cleveland Tree Plan" complete the subsection.

Tree Removal Permit – Residential Property Owner explains the purpose which is fairly new, how it would be issued, who would approve it, and what might be excluded, such as a storm, tornado, etc. This is assembled content, and at no point is there a fee. The idea is that a resident could go on line, contact the Service Department, and complete a permit. The intent would be to give them information about notifying the City that the removal will take place, making sure they work with a qualified or approved removal contractor, and giving them some sort of information on maintenance, clean-up, expectations, contacting their neighbors, etc. There is nothing now, formally, that we have. The trucks roll in and down comes the tree. The idea here was to have a reason for it, but not make it monetary. It is not to charge for the permit, but more of an alert to the City and allows the Tree Commission to know the tree at a specific location will come down.

Mr. Winzig noted that his intent in writing it is not to put a burden on the homeowner, but to make it important that they are completing a permit, alerting the City that it is taking place, and both the Service Department and the neighborhood know what is happening, and that they are getting a good contractor.

At the bottom of Page 13, (D) Approval, Mr. Winzig suggests the addition of "Upon approval, the City will provide the resident/owner information of tree removal safety, tree replacement recommendations, neighbor communications..."

Ms. DeGeorge asked Mr. Winzig what the comments "(should homeowner be required to alert

City in event of utility, cable, sprinkler, dog fence, etc.??)" are in reference to.

Mr. Winzig stated that this was more to Mr. Barbour's point about if a dog safety cable system, or lawn irrigation system is being put in, is there any reason for the City to be aware of the installation.

Below that is the list of things that would not require a permit.

Mr. Barbour stated that one person should be given the authority to issue the permit, either the Building Director or the Service Director. The same person would answer questions about the city arborist, landscaper or tree removal company. If it is the Building Director, any decision made would be appealable to the Board of Zoning Appeals. If the permit process resides with the Service Department, there is no existing appeal process. Mr. Barbour suggested creating an appeal process in the event that a permit is denied.

Mr. Winzig stated that the intent is the approval of a professionally recognized tree removal company. Would the Service Department or the arborist have the authority to say which tree removal company is acceptable or not?

Mr. Barbour stated that Section K (a) creates a standard for the tree removal company to adhere to, the ANSI A300. Mr. Barbour suggested review of those standards for familiarity. Mr. Winzig noted that it is a massive document. What percentage of tree companies can meet this standard?

If a standard is going to be legislated, before it is adopted it might make sense to see what that means to the average person who inquires.

Mr. Winzig stated that the underlying attempt is to have a qualified contractor.

Mr. Barbour questioned whether this is something that is certified by a test with a card that is carried around in the wallet or displayed on the side of a truck. Or, is it just a process that is used? If it is a process that is used, who from the City is going to be on the site who is knowledgeable about the ANSI A300 to verify that it is being followed?

Mr. Winzig stated that it is worth checking.

Ms. Maier stated that there are quite a few things to review on this while we further work on the draft. Ms. Maier suggested turning to the next agenda item at this point for the remaining time of the meeting this evening.

C.O. Chapter 1179 Sign Ordinance

Ms. Maier stated that at the last two Council meetings the Council briefly touched on the sign ordinance for the City and the changes that are required for the ordinance due to the fact that some of the portions of the sign ordinance are out of compliance with state law.

Building Director Tuck-Macalla has gone through the ordinance and updated it with some draft

language. The Planning and Zoning Committee will work through the draft. Ms. Maier called for questions from the committee, noting that for her some of the basic questions are in regard to maximum height and width of signs. She noted that in some cases the total sign allowance is not the product of the height and width, i.e., 8 feet by 6 feet would be 48 square feet rather than the 40 square feet. Ms. Maier asked Building Director Tuck-Macalla if he is pulling these standards from elsewhere.

Building Director Tuck-Macalla stated that they are standards from elsewhere.

Ms. DeGeorge noted that discussion is needed for the amount of days that signs could be up before being taken down, and then allowed to be put back up. It reads 45 days up, 30 days down, and then 45 days back up.

Ms. DeGeorge asked about decorative garden flags, and whether they fall into any particular category. They have been around for a long time, but lately carry different messages.

Mr. Tuck-Macalla stated the decorative garden flags would fall under residential signs. Mr. Tuck-Macalla stated he did not find a distinction between informational signs and lawn signs. There is a carve-out for informational signs. A “keep off the grass” sign would be an informational sign. As the ordinance stands now, the decorative garden flag sign would not be allowed. Under the revised sign ordinance draft, it would have to follow the rule requiring it to be taken down for 30 days. This might be something to be reviewed further. At this time it is 18 square feet and some people have flags that are much bigger.

Ms. Maier stated asked if the draft is following a particular design standard for illuminated signs.

Mr. Tuck-Macalla stated that most other cities have standards for illuminated signs. The City of Bay Village did not have anything in regard to illumination.

Ms. Maier asked if there were any questions from the committee members.

Mr. Winzig asked if the bulk of the ordinance is for commercial signs. It seems from a content standpoint it bounces back and forth. It might be helpful to define the commercial sign requirements from the residential sign requirements. It gets very detailed regarding square footage, angles, lighting, or no lighting. At the very beginning, in 1179.01, the purpose says, “compatible with their surroundings, expressive of the type of activity to which they pertain to the community as a whole, legible, and in conformity with the circumstances in which they are seen.” Mr. Winzig asked who would make that determination.

Mr. Barbour stated that the purpose section is to set out for a judicial body or someone else who is trying to discern on what basis you are enacting this ordinance so that it may regulate your free speech within the bounds of the law, and if you have a valid purpose for sign regulation. In the past it has been aesthetic, taking into consideration visibility for drivers. Generally all signs would sustain a purpose to allow them to conform to the law, rather than someone deciding that the fence is 32’ long, or no more than 5’ in height. This is a different circumstance.

Planning and Zoning Committee
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Ms. Maier asked if there are any comments or questions from either the virtual or in-person audiences related to the agenda items this evening. There were none. Ms. Maier stated that the meeting will be closed this evening, with a committee meeting scheduled in the near future.

Meeting adjourned at 6:53 p.m.

Sara Byrnes Maier, Chair

Joan T. Kemper, Clerk of Council