

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
June 12, 2018

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, June 12, 2018, in the Alcazar Room at City Hall. The meeting was called to order by Clyde M. Taylor, III, Chairman, and the following were present:

1. ROLL CALL

Clyde M. Taylor, III, Chairman
Martha Mickler, Vice Chair
Noel Mahr
CeCe Reigle
Larry Weeks
Stephen Simmons – absent
Dennis Wissel - absent

Staff Present:

John Cary, Esq., Assistant City Attorney
David Birchim, Director, Planning & Building Department
Richard Schauland, Building Official & Code Enforcement Manager
Curtis Boles, Code Enforcement Inspector
Robert van Mierop, Code Enforcement Inspector
Sandra Partin, Administrative Coordinator, Recording

The City staff was sworn in.

**2. APPROVAL OF MINUTES
(May 8, 2018)**

MOTION

Ms. Reigle moved to approve the minutes as presented. The motion was seconded by Mr. Taylor and approved by unanimous voice vote.

3. DISCLOSURE OF EX-PARTE COMMUNICATIONS

Mr. Taylor disclosed that he had received numerous email

communications in regard to 31 Park Avenue, and that he had provided them to the City to be placed into the record. He then read the names in which the ex parte communications had been received and the dates of receipt.

Mrs. Mickler disclosed that she too had received communication regarding 31 Park Avenue and had provided a copy to the City to be placed into the record.

Mr. Mahr disclosed that he had received a voicemail from Gina Burrell, but had no contact.

Mr. Weeks also disclosed that he had received email communication, but had no personal contact.

General public comment for items not on the agenda was opened, however there was no response.

4. VARIANCES/TREE REMOVAL

Item 4 (a) 2018-0258

Grace Minor
31 Park Avenue
Removal of two Live Oak trees measuring 28" and 30" d.b.h. without a permit
City Code Chapter 25, Section 25-56

Mr. van Mierop read from the staff report and commented to the following:

- He gave correction of the typographical error in the staff report with regard to item #3, the incorrect date for the set hearing read March 9, 2018, and should have been June 12, 2018.
- Staff recommended that the Board find violation for the removal of two Live Oak trees without a permit and impose a fine not to exceed \$5,000 per violation, and direct the property owner with tree replacements.

Mr. Taylor asked if he had contact with the owner of the property at 31 Park Avenue.

Mr. van Mierop replied that staff had received a complaint of the possible removal of trees without a permit. He responded to the complaint and found the tree company still present at the property, and that he spoke with the owner of the company who stated that there was no permit for the removal.

Ms. Reigle questioned that in cases such as this, could a person or police officer approach and order cutting to stop until confirmation of a permit be produced, and added that perhaps this should be added into the tree plan.

Mr. Taylor commented that the board should revisit that when they come to the management plan. And he asked if there were any further questions.

Ms. Reigle commented that from the photos presented in the board packets that the access to the driveway did not appear to be restricted, and asked staff if that were correct.

Mr. van Mierop confirmed that was correct.

Mr. Taylor asked if staff had any previous complaints of this homeowner removing trees without a permit.

Mr. van Mierop replied that there were no previous complaints.

Grace Minor, 31 Park Avenue, was present and testified to the following:

- She had knowledge of the requirement of a tree removal

permit prior to removal of the two trees in question, as she had been through the permitting process when a tree on her property was damaged during Hurricane Matthew.

- She produced a copy of the contract in which she had entered into with the tree removal company, and pointed out that the contract stated they would be responsible for obtaining all permits and had stated that they would do so.
- She confirmed that access into the driveway was not restricted, however there was less than 16 feet between the two trees, and as the trees continue to grow they would eventually encroach into the driveway space. That the tree to the east side of the driveway had developed a very large hump, and the tree on the other side of the driveway had begun to grow into the power lines.
- That the tree company stated there would be no issue with having the trees approved for removal, and that they would take care of the permitting.
- She was unaware of the absence of a permit application until she received a letter of violation from the city.

Ms. Reigle asked council if the responsibility was to the owner of the property to see that a permit had been obtained.

Mr. Cary responded that the responsibility was to the property owner, and that it could be pursued in a civil court against the hired contractor. And he advised the board that with being a quasi-judicial panel, they can weigh evidence and use evidence as a mitigating factor in the decision of a fine.

Mr. Taylor asked Ms. Minor if she had any discussion with her neighbors about the removal of the trees.

Ms. Minor stated that she did have conversation with neighbors and that some were in agreement of the removal and the remaining were of the opinion of saving all trees at all costs. That it was never her intention to remove the trees without a permit. That the trees were encroaching her driveway, and that was the reason for the removal.

Mr. Taylor asked why the trees were impeding the driveway. And he commented that by looking at the photos, it appeared that a RV could park between them.

Ms. Minor explained that as the trees continue to grow they would encroach into the driveway causing the passage to narrow. And she was told that the driveway width did not meet code, but she was taking their word on this.

Ms. Reigle asked for clarification from a previous comment of hurricane damage, asking if these two trees were damaged during hurricanes.

Ms. Minor confirmed that the hurricane damage was to other trees on the property, and not the two in question.

Mr. Mahr asked if she had made contact with the city since receiving the notice of violation to ask what could be done.

Ms. Minor replied that she had not. Mr. Taylor commented that the board had no ability regulate tree companies, or to impose fines to the tree removal companies. That the responsibility was to the property owner. And that she would be required to replant four trees for the removal of the two.

Ms. Minor reiterated that it was never her intention to remove the two trees without a permit, and that she had no issue with the four replacement trees, as her lot was very wide.

Ms. Reigle asked if the tree removal from storm damage had any replacements.

Ms. Minor responded that no replacement for the storm damaged tree was planted.

Mr. Birchim advised the board that there was an emergency declaration after the hurricanes where replacements were not required for those having to remove trees that were damaged during the hurricanes. Explaining that permits were not entered during that time so tracking of replacement would have not been possible.

Mr. Taylor read into record an ex-parte email communication from Mark Fulton of 26 Sylvan Drive.

Public comment was opened.

Elizabeth Battleshack, 4 Beacon Street, (Fullerwood Neighborhood) commented that she had worked with Melinda Rakoncay in the mobility meetings around the city. During that project, they visited every neighborhood and were told that trees were what people liked about their neighborhood. That the city was known for its trees, and that to see trees removed without a permit was very upsetting to her, and believed it to be an assault of the beauty of the neighborhood when perfectly healthy trees are removed. She added that between Hurricane's Matthew and Irma, the loss of major trees within the city without replacement was upsetting and they were trying to come up with trees to replace the tree canopy in the neighborhoods. And she believed the burden was to the property owner to be sure that the permit requirement was complied with. She commented that the large tree in the back yard had been removed prior to Hurricane Matthew and believed the two trees in question to be asked for removal with that same permit and was denied. She believed this to be a blatant disregard for the rules of the city and the beauty of the neighborhood, and she encouraged the board to impose a maximum fine in this case.

Public comment was closed.

Mr. Taylor asked staff if there were any previous applications that the city was aware of with regard to this property owner, as this board was to consider whether there were prior violations.

Mr. Birchim advised the board of a previous tree removal permit that was obtained, and stated that the clerk had a copy for the record. (A copy of record was passed to the board for their review)

Mr. van Mierop spoke to the previous permit that was introduced into the record, explaining that it was approved because it was a dangerous tree that had sustained damage during the first hurricane. And he went on to explain that while there was not a requirement for storm damaged trees to obtain a permit, the code inspectors were trying to place eyes on every tree claiming to be storm damaged to confirm that the claim was correct.

Mr. Taylor stated that with the review of the previous tree removal permit presented, that the comment of the two trees in question having been included on the previous permit was not correct, that they had not been previously been requested for removal and denied. He then spoke to similar cases in which fines had been imposed for removal or irreparable damage to trees.

Ms. Reigle expressed that had this tree removal been appealed to this board, she believed that it would not have been approved. And she asked her fellow

board members whether they concurred.

Mr. Taylor spoke that he was not comfortable to make a statement either way to that comment. And he asked council how email communications would be considered in comparison to a person of the public speaking under oath at a board meeting.

Mr. Cary explained that they could consider the email communication as those of a public comment, as the cross examination would not be administered.

Ms. Reigle commented that perhaps you take credence of the source, in which a neighbor would be affected by the case whereas a person that lives across town would not be affected in the same way.

Mr. Cary responded that if they were being sworn in they were presumed to be telling the truth as if being sworn into court. But you, as the fact finder, have to decide do they seem credible or not, and that is harder to do with an email. That there was no way to look at the veracity of the person emailing and no way to challenge or question further, but it could be considered.

Mr. Taylor responded that in previous cases he did not recall people coming in upset, and he thought that with this case it was significant that neighbors were present or submitted communications with their concerns.

Ms. Reigle asked if there was any way to estimate the landscape value of a Live Oak tree.

Mr. Birchim responded that the city's contractual arborist was in the audience to speak later on in other business, but was not prepared to answer questions in other cases.

Mr. Taylor stated that while Ms. Reigle's concerns were valid, the board was a fact finding board and should make their ruling on the facts presented and testimony received.

Mr. Mahr stated that the trees were alive and survived two storms; that there was no permit for the removal of the two trees; and that the building director could not issue an after-the-fact permit for removal of a preserved tree. And he commented that a good starting point for a fine would be the fee schedule associated with an after-the-fact removal for a tree of this size, which would be \$800 per tree. And he reiterated that an after-the-fact would not be applicable here.

Ms. Reigle commented that in comparison of other communities and the value of the removal of the trees, she believed that the fine should be no less than \$5,000 per tree.

Mr. Taylor commented that while it was good discussion, he was thinking much higher than \$800.

Mrs. Mickler commented that if it were an after-the-fact permit, which we know

would not be permitted, \$800 was too low.

Mr. Weeks commented that he had gone to google earth and the trees appeared healthy. That there was a violation, and the facts were there, and he thought it was important for this board to make a statement.

Mr. Cary advised that the after-the-fact was off the table, he understood Mr. Mahr's comment as to just bringing a starting point, however he wished for the rest of the board to understand.

Mr. Taylor commented that the driving force to him was that if a significant fine was not imposed then there would be no way for this to stop. That he usually started at the top of the allowed fine and went from there. And he spoke to the contract, stating that it was meaningless to this board. That the circumstance from the homeowner, that they do not know what to do, that they call around to the contractors and do not understand what is required and rely on them to know. That the homeowner had spent a lot of money to have the trees removed, that she had hired a contractor to remove the trees that presented to be legitimate.

Ms. Reigle commented that perhaps they start at the maximum fine of \$10,000 and give credit for what the homeowner had paid for the removal.

MOTION

Mr. Taylor moved to find violation for the removal of two preserved trees without a permit, causing irreparable/irreversible damage and impose a fine in the amount of \$4,000 per tree for a total fine of \$8,000. In addition require replacement of four shade trees. The motion was seconded by Ms. Reigle and approved by unanimous voice vote.

5. REVIEW OF PREVIOUSLY HEARD CASES

Item 5 (a) 2018-0119

**Florida East Coast Railway, LLC
Coastal Highway (US-1)/Parcel
Number 149530-0000**

New sign constructed to replace destroyed, non-conforming sign on US-1.

City Code, Chapter 3, Section 3-23

Mr. Schauland read from the staff report and commented to the following:

- On May 7, 2018, staff accepted a stipulation with Outfront Media. The stipulation required that a demolition permit be obtained within 10 days and commence removal of the sign. That there would be no fines or penalties unless the sign was not removed within 30 days.
- On May 8, 2018, a demolition permit was issued for the removal

of the sign, and the CEAAB continued the case until June 12, 2018.

- On May 14, 2018, staff observed that the sign had been removed.
- Staff recommended that the board close the case for compliance.

MOTION

Mrs. Mickler moved to close the case for compliance. The motion was seconded by Mr. Mahr and approved by unanimous voice vote.

6. REVIEW OF NEW CASES

Item 6 (a) 2018-0053

**Gina L. Williams, Etal
12 Poinciana Avenue**

**Vacant property in state of disrepair;
open to trespass; property
overgrown.**

**City Code, Chapter 8, Section 8-302;
Chapter 19, Section 19-4; Chapter
103.2, Standard Housing Code.**

Mr. van Mierop read from the staff report and commented to the following:

- Since the placement of the item on the agenda, staff had been made aware that the property had been foreclosed and was scheduled to be auctioned on June 28, 2018.

- Staff recommended that the board continue the case to allow for the sale of the property.

Mr. Taylor made inquiry of the title of the property.

Mr. Cary advised the board that with the auction scheduled later this month, the city would be unable to place a lien to recoup for any work that would be done prior to the sale of the property. And he advised the board stay the case to the next meeting, to allow for the sale of the property and for the city to place a lien for any work that would be done.

MOTION

Mr. Weeks moved to continue the case until the July 10, 2018 meeting. The motion was seconded by Mr. Taylor and approved by unanimous voice vote.

7. CITY ATTORNEY ITEMS

None.

8. OTHER BUSINESS

Arborist Report Template, Presentation by Marquis Latimer + Halback.

Mr. Birchim reported to the board that several months ago the board made some recommendations/suggestions for city staff to look into amending and improving our tree code. Making changes that would have arborist reports in a more consistent format;

made recommendations about publishing a list of replacement trees, shade trees, and understory trees; and recommendation of how to improve the process overall. We have employed the services of an arborist, Freemont Latimer of Marquis Latimer + Halback, to meet that request. Mr. Latimer was present to produce materials and a presentation to the board. The city would like the board's feedback. We also plan to attend the Street Tree Advisory Committee meeting, as well as the Planning & Zoning Board meeting to get their feedback. And if this requires code amendments, ultimately it would be approved by the City Commission. He further commented that this was the first step in the process and we welcomed feedback.

Mr. Taylor asked for clarification of the focus of this board. In which Mr. Birchim responded that we welcome all feedback.

Freemont Latimer, Marquis Latimer + Halback was present and commented to the following:

That the material being presented was generated by this boards request for a more standardized arborist report. He understood that previous reports that had been received by this board had been inconsistent and lacking information to assist in the making a determination by this board. So they looked at the process of how trees are removed, permitted in the city and what might go into that report. He does a lot of permitting through development as he

is also a landscape architect and does a lot of site design, and he was surprised at how difficult the process was.

The following lists the specific subjects covered in the presentation and discussion:

- Tree Removal Process Chart.
- Tree List for Preserved, Exempt, and Invasive Species.
- List for Approved Replacement Tree Species for Shade Trees, Understory Trees, and Palm Trees.
- Recommendation 13: Update Chapter 25 Trees and Landscaping and consider adding new sections to the ordinance.
- Recommendation 14: Seek ways to improve inter-departmental communication and create practical policies.
- Recommendation 15: Consider supplemental funding options.
- Arboriculture Report Template.

If you look at the process chart, there are four different routes you can go in the city for removing a tree. So he thought that part of what they might find in the difficulty of having people properly permit for a tree to be removed is that it is difficult to figure out what to do, because you have to reference chapter 11, 25 and 28 of the code. It is quite a feat to figure out exactly the critical areas that are within the code itself. So as you know, there are four routes you can take. And he presented a power point.

First question being, is it preserved, protected, invasive species, and exempt species, in which you do not need a permit for an invasive or exempt tree.

Mr. Taylor asked that the draft be cleaned up to match the language, and to simplify the process to clearly communicate with property owners what they were required to do. And he commented that there are shade trees, understory trees, etc. That the process was confusing and he thought there needed to be some educational component to let people know when they need to come in for a permit and what they can do on their own.

Mr. Latimer explained the intent of the document, and directed the board to look behind the process sheet, where there was a number of tree lists, some were actually excerpted from the code and they have added the recommended trees for shade trees, understory trees and palm trees for planting. That was the specific request for people that do not know what a shade tree was. They did not intend that to be the end all, as there was a clause of to be approved via the Planning & Building Department. And he explained that this was not only seen by the code enforcement side, but also going to be used on the development side. So because there would be landscape architects, engineers, and builders pulling out the list and taking trees, they wanted to make sure it was large enough for diverse species when it is all said and done. So as to trees and pick your own permitting, choose your own venture.

So once you know whether or not it is preserved, and if it is not it is simply a tree application with the city. Or if it is part of a building permit and there is all of the site side and application that goes with that which is reviewed by the city staff. If it is preserved and is not a building permit, then it goes to code enforcement. So looking at how we are going to structure the arborist report, we did not want to make it too erroneous, but it would include substance in which to provide this board with data they would need, but not so difficult and expensive that people would try to avoid doing it. You will see items on the code enforcement section that are not included but are included on the planning and building side. So the plans that will come before the code enforcement would be the tree removal application, the CEAAB application, the arborist report that would include the identification, measurement, site observation and site location, a condition assessment and recommendation. So you will have data on the project, data on the tree, the location of the tree and the arborist will be forced to make a recommendation and back up why they did it. This is the first page of the actual report and asks for the information on the arborist and requires that they be a certified arborist, and member of the ISA, which is the International Society of Arboriculture which is becoming the standard for accredited professionals.

Mr. Taylor commented about previous arborist reports received by this board, that they had been brief and he was not

sure if that was best to go deeper or simplicity was how it had to be.

Mr. Latimer responded that it was absolutely necessary, explaining that the condition would be assessed and recommendation would be given, which all would be consistent and organized. He could place a clause net, "If trees are rated poor or dead, please provide supplementary information describing any hazards, diseases".

Mr. Taylor asked for clarification of tree inventory.

Mr. Latimer gave a brief description of tree inventory, adding that it becomes important when you are looking at calculations for code and replanting on the site plan side of things.

Ms. Reigle asked Mr. Boles, as a majority with properties already being built on, when someone comes in for a permit to cut down trees, what percentage are on already built versus going through a building permit process.

Mr. Boles asked for clarification of the question.

Mr. Birchim asked for clarification of the question, was the ask for how many tree removal permits that come into the office that are related to site development versus tree removal permits that come in to have a tree removed from a back yard.

She confirmed that was the question.

Mr. Birchim stated that he did not have an answer to that question.

Mr. Taylor gave an example of a previous case in which an application came before this board where it should have gone before the Planning & Zoning.

Ms. Reigle then explained that this had been raised for purpose of discussion. Because in her experience and living here 25 years, she is asked what do I do when I want a tree cut down, 99% of the time there is not a building permit involved. But with building that would go through the Planning & Zoning Board, is that correct.

Mr. Birchim explained that the trees only came to this board when they are in the preserved category. Adding that code enforcement reviews tree removal applications as a process in our daily business. It is only preserved category trees that come before the boards and only when someone wishes to cut down more than 50% of the total tree canopy of their property that they have to go before the Planning & Zoning Board. So it is a small percentage to have to go before a board.

She believed a step to be missing in which someone would come out to determine whether the application would require a removal permit, board application, arborist report, etc.

Mr. Boles explained that the code enforcement looked at every tree and channeled the property owner to the

proper flow. That there was a fee for this process and that the cost of tree removal would be insurmountable to the property owners.

Mr. Taylor commented that while it was clear that when a homeowner has a building permit, they know whether they need a tree removal permit. Unlike a homeowner without a building permit involved. And he asked if we could ask to have an arborist give alternative remedies to property owners.

Mr. Birchim explained that staff takes calls and instructs caller when they need a permit. That code enforcement can go out if they are unsure whether a permit is required.

Mr. Latimer stated that the arborist template report had been created for this board. That the property owner would be given the template for their hired arborist to fill out, and when that report was provided with an appeal application, the board would have clear and consistent assessment of the tree(s). And he added that if the board believed the report was inaccurate or lacked detail they could request that.

Mr. Birchim advised the board that they now have a contractual arborists hired, and they can ask for a third party report on a tree where they are presented a report that you need a second opinion on.

Mr. Taylor raised a question as to the age of a tree, and he commented that

there was no reference for them to know the longevity of a species of tree.

Mr. Latimer stated that it was difficult to provide an accurate age of a tree, and that he could possibly pull from data bases for species and longevity. He then directed the board to look back to the process chart, page two, category of canopy coverage estimate. If looking at removing trees, what is the current canopy coverage on the property and what is being proposed with removal, because again if you lose 50% of the canopy coverage on a site it triggers the planning review. Then on the site plan it is the generic language, but the second portion is where they are asking for something new. It is always hard when the Planning & Zoning gets a site plan so they ask that the trees be marked out and color coded, and also the tree protection zone, which is defined in the code as 3 times the diameter of the trunk, and any construction activity within that zone would have to be monitored by an arborist. And then the location of all of the tree barricades and protection fencing. Because it is one thing to say you are saving a tree and another to say where trucks can park and where you can pour paint.

Mr. Taylor commented that in areas such as Lincolnville where lots are small, is there a way to estimate the coverage of a slightly larger area instead of focusing in on a specific property. And he gave an example of a similar case where they had to deny removal because there was no room for planting a replacement.

Mr. Latimer asked Mr. Birchim if they could go beyond the boundaries of the property, as this was getting into code.

Mr. Birchim explained at this point we are taking comments and this is a valid comment and we can see if this can be fitted into the current code or if it would require a code amendment.

Mr. Taylor commented that when going the permit route there are credits & debits that code enforcement does not get into. Where code enforcement can only say yes you can remove or no you cannot remove, and require replacements. And in some cases the board had denied based upon inability for replacements. And he asked that we look to the professional on canopies. That it was an issue for code enforcement that is not appropriately addressed just on individual lots.

Mr. Birchim asked to clarify the ask, that the canopy perimeters could be created. He then spoke to the board and the arborist asking should the canopy of the neighborhood be looked at and not just a particular property or two. If you are looking at the health of a tree canopy, is it better to look at it as a neighborhood scale rather than a couple of houses on the block scale. So is the approach of the canopy wrong, and should there be a survey canopy such as South Street, St. George Street, South Davis Shores, etc., and have an arborist determine the overall health of the canopy and then should a property owner come in and we look at the overall canopy and require planting replacements or

payment into tree mitigation to place trees in other neighborhoods with a poor canopy.

Ms. Reigle commented that the board should be aware of species of trees for location, whereas trees that are salt tolerant, etc.

Mr. Latimer responded that in areas where replacement might be an issue, then payment into the tree mitigation could be an option, whereas two trees could be added in a needed area of the city. That a request for a list of ideal species for area for planting. That creating a neighborhood tree canopy assessment was not an easy task that an aerial could be done on an area when making removal decisions.

Ms. Reigle relayed that she would like to see the required tree replacements enforced.

Mr. Birchim suggested that the burden could be placed on the applicant/property owner.

Mr. Mahr made suggestion that the tree surgeons be named on the applications.

Mr. Taylor seconded Mr. Mahr's recommendation to add the tree surgeon be documented on the application.

Mr. Taylor commented that the public had no way of hearing about the contractors removing trees without a permit, in where cases are brought before this board.

Mr. Birchim explained the process in which trees came before the board and the possibility of which the process could be simplified by having one board hear cases of trees.

Ms. Reigle stated that she was in favor of the tree removal for building should remain with the PZB.

Mr. Weeks added that he seen the value in having the trees go before one board, and the after the fact removal without a permit would come before the Code Enforcement Board.

Mrs. Mickler concurred and added that she believed that would simplify the process for the property owners.

The board and staff had discussion of the process in which to preserve locations for the next generation. And gave an example of Magnolia Avenue.

Mr. Latimer replied that with diligent replacement of declining/dead trees is the remedy for such areas.

Mr. Birchim brought up the tree mitigation fund, asking that the board think about where the funds would go, that is all being done on public property. For example, all of the oak trees on Magnolia Avenue are on public property, how can the tree mitigation fund be used to maintain that tree canopy through strategic replacements, pruning and that kind of thing.

Ms. Reigel mentioned the trees that were lost in the Huguenot Cemetery.

Mr. Birchim stated that was private property.

Mr. Latimer explained that removing the stumps and replanting would be troublesome, as this was a colonial cemetery.

The Board thanked Mr. Latimer for his work.

**9. REVIEW OF CONFLICT
STATEMENTS FROM PREVIOUS
MEETING**

10. ADJOURNMENT

Meeting was adjourned at 5:13 P.M.

Clyde M. Taylor, III, Chairperson

Sandra Partin, Administrative
Coordinator