

**Work Session Meeting of the Sandy Springs City Council was held on Tuesday, November 12, 2013, at 8:49 p.m., Mayor Eva Galambos presiding.**

**Councilmembers present:** Councilmember John Paulson, Councilmember Dianne Fries, Councilmember Chip Collins, Councilmember Gabriel Sterling, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery.

**STAFF DISCUSSION ITEMS**

**Public Works**

1. Consideration of contract modification to design Capital Improvement Project CC009 and CC010, Sandy Springs Circle Streetscape Project Phases 1 and 2, subject to validation and approval by the Legal and Finance Departments

**Director of Public Works Garrin Coleman** stated in July 2010 nine firms submitted proposals for projects T-0014 and T-0015, which are the Sandy Springs Circle Phases 2 and 3. This project is along Sandy Springs Circle from Hammond Drive all the way to State Route 9. Staff went through the preliminary design and received concept approval from GDOT. The City Center master plan process started, which slowed the project down. Subsequent to the City Center planning process, staff split the project into two phases. The CC009 project will be funded locally and the other phase, CC010, will be funded with federal funds. This item is a modification of the existing contract for Michael Baker Corporation, which at the time was the L.P.A. Group. The contract is to use the old RFP process from 2010 and move forward with two new contracts for the different phases. The two phases have different scopes in the way the projects will be funded. The CC010 project will have to go through GDOT and use ARC and GDOT funds for most of the construction funding.

**Councilmember Gabriel Sterling** asked if the CC010 funds are already allocated or if the City has to get the money from those entities.

Director of Public Works Coleman stated the City has \$1.8 million in construction funding for project CC010. Staff has gone back to GDOT and ARC based on the revised cross section for the master plan and let them know the City would like to discuss receiving more money when closer to construction.

**Councilmember Tibby DeJulio** asked what will be done during the projects.

Director of Public Works Coleman stated a multi-use path will be built. The CC010 project will be a road diet. This will include parallel parking, but there has been talk about using angled parking.

Councilmember Sterling asked if there will be more parking spaces, if there is angled parking.

Director of Public Works Coleman responded potentially.

**Mayor Eva Galambos** asked if this is the area near Ace Hardware.

Director of Public Works Coleman responded yes.

**Councilmember Dianne Fries** asked what the timeline is for the two phases.

Director of Public Works Coleman stated staff would like to move forward in concurrence with the development of the Phase I block. Whatever the developer's schedule is, staff would like to incorporate that as quickly as possible.

Councilmember Fries asked if it would be both phases.

Director of Public Works Coleman stated it would just be project CC009 Phase I.

Councilmember Fries asked if that project is from Roswell Road to Mt. Vernon Highway.

Director of Public Works Coleman stated Phase I is from Mt. Vernon to Johnson Ferry on Sandy Springs Circle.

Councilmember Fries states she thought that section would be worked on before the project started.

Director of Public Works Coleman stated the City started in 2010 with the design and concept development, but the project was delayed because the City did not know what the developer was going to recommend for that area. Staff wanted to make sure the City is in concurrence with that is being done.

**Councilmember John Paulson** asked if there is another \$364,000 to redesign this project and if the project has changed much.

Director of Public Works Coleman stated the concept is slightly different in that it is a multi-use path and the right-of-way requirements will be different. There are funds to cover these changes.

**Councilmember Karen Meinzen McEnery** stated Council saw preliminary costs on the intersection of Mt. Vernon on the east side of Sandy Springs Circle related to the elevations from taking the road down. She asked if these plans will lock the City in on the elevation on that intersection or the cost.

Director of Public Works Coleman stated staff would like to tie into whatever elevation is show there. Currently, the City does not have that elevation set.

Mayor Galambos asked which would come first.

**City Manager John McDonough** stated the Mt. Vernon design will come first.

Councilmember Meinzen McEnery stated once Council decides what the elevation at Mt. Vernon is, then the projects will tie into it.

Director of Public Works Coleman responded yes.

Councilmember Sterling asked when the City will receive the Mt. Vernon proposal.

City Manager McDonough stated the plan is to work with the development partner and get their input on the issue of elevation and grade, so there will be the best developable parcels. Staff anticipates selecting a contractor in the March or April 2014 time frame. He anticipates shortly after the City will select a lead architect and a civil engineer to be part of that team. Late fall 2014 is when staff will have more information.

Councilmember Meinzen McEnery stated that area will be attractive, developable, and people will want to visit it. She asked if some existing trees in the area can be left where they are. That corner has

beautiful trees. She hopes the master developer incorporates the elevation decision into the plan. There are no major trees anywhere else.

### **Community Development**

#### 1. Tree Conservation Ordinance

**Director of Community Development Angela Parker** stated in September 2013 Council directed staff to review a proposed framework for revisions to the City's tree ordinance. This has been done and staff developed a report that takes into consideration the eight items that were presented in the framework. Staff ultimately made recommendations on each of the eight items. The first item is to consider expanding protection of the existing tree canopy for larger lots. Staff looked at whether or not the canopy requirements should be increased above what they are now. Staff recommends not increasing the current canopy requirements, because it would have very little or no impact on existing construction. The canopy requirement is set to where if one cuts down trees they can be replaced. The focus of the canopy coverage is to try to save trees on larger lots. Staff looked at what the primary issue is with the larger lots. There are houses with swimming pools and tennis courts being built in the City. Included in the agenda package is a typical plan that shows a large lot. This particular lot was discussed earlier in the evening. The lot has a pool and tennis court and is almost two acres. The green line shown on the plan to the left side of the plan is the area where trees were saved. In order to get the very large house on the two acre lot, the entire front yard had to be cleared of trees.

**Councilmember Karen Meinzen McEnerny** asked if this is the Woodvale lot.

Director of Community Development Parker answered yes.

**Councilmember Tibby DeJulio** asked how large is the house.

Director of Community Development Parker stated she does not know what the footprint of the house is.

Councilmember DeJulio asked if the plan states 4,700 square feet.

Councilmember Meinzen McEnerny stated 74,750 square feet was cleared.

Director of Community Development Parker stated at least seven landmark trees were removed. In this particular example, the only way the trees could have been saved was to limit what the property owner could do on the lot and not allow a tennis court or have them build a smaller house. Generally, it is easier to save trees on a larger lot, because they have larger setbacks. Minimum setbacks on the larger R-1 lots are twenty-five feet. Even with a twenty-five foot setback, with this house the entire front yard had to be cleared of trees.

**Councilmember Gabriel Sterling** asked if there was a home on the property before this plan.

Director of Community Development Parker stated she believes there was a home there.

Councilmember Fries asked what the percentage of canopy is at the green line where the property owner did not remove the trees.

Director of Community Development Parker stated this lot met the 30% canopy requirement.

Councilmember Fries asked if that was without the property owner adding the trees that the landscape plan shows and if it will be above 30% coverage.

Director of Community Development Parker stated the number will be above the 30%. If the canopy requirement is increased to 40% or 50%, the property owner would still have to clear this much of the lot. The percentage amount would increase the amount of planting required. It is easier to save trees on larger lots, but larger lots are more attractive for this type of campus style home living.

Councilmember Sterling stated at least seven landmark trees were cut down. If the property owner is replanting the landmark trees, they will reach the same size as the ones that were cut down in twenty years. He asked if the property owner has to pay into the tree fund.

Director of Community Development Parker stated generally there is never a payment into the tree fund for single family homes and certainly not larger lots, due to adequate room to replant trees.

Mayor Galambos asked how many new developments of this kind with swimming pools and all these amenities are in the zip code 30327.

Director of Community Development Parker stated it is unusual that staff sees properties such as these with a swimming pool and a tennis court. She is displaying this plan because staff received many calls about it. Generally, staff is seeing pools and more paved surfaces such as a portico with separate free standing three car garages. These buildings have large footprints. The only way to effectively limit the clearing is to limit what is placed on the lot.

Councilmember Fries asked if Council knows where Charlie Laudermilk's home is and when it was built. The home is large, but the lot is very wooded and you cannot see the house.

Director of Community Development Parker stated in this case staff is not recommending a change. As staff receives the new canopy data they will look at where the City is losing trees. The City tree replanting may need to be enhanced, even though some of the other recommendations in the presentation will increase tree planting.

Councilmember Sterling stated the issue with people discussing flooding and mud on a nearby property is a code enforcement issue. He asked if she is aware of this situation.

Director of Community Development Parker stated she was unaware of the mud and flooding on the property discussed earlier. During the break she tried to get in touch with the City's lead inspector. When there is a significant issue she is usually notified, but in this case she was not.

Councilmember Sterling asked if this is a staffing issue, since this is an important situation that Director of Community Development Parker was not notified about.

Director of Community Development Parker stated if the issue is significant, the property owner would be cited. She will have to get back to Councilmember Sterling regarding why this situation was not brought to her attention.

Mayor Galambos stated there was a similar situation in the City at Riverview and Northside Drive and Director of Community Development Parker was notified immediately.

Director of Community Development Parker stated the City received many calls about an erosion issue, but when an inspector was sent to the property there was no erosion.

Councilmember Fries stated the property owner on the first case being discussed will be well over the 30% of tree canopy.

Director of Community Development Parker responded yes.

Councilmember DeJulio stated anyone that makes that large of an investment will want a lot of landscaping.

Councilmember Fries stated she gets concerned when she hears that Council is proposing a requirement of a 50% tree canopy. That is potentially telling people how they want to live on their land and not everyone wants a shady yard. There are some people that want a big sunny front yard to plant flowers and have a woody backyard instead.

Director of Community Development Parker stated boundary trees are trees on someone else's property adjacent to a lot. Currently, the City requires the boundary trees to be protected. The adjoining property owner is notified if there are any impacted boundary trees. There is a bond put up and held for three years. This is in the City administrative guidelines and not the ordinance. Staff recommends placing this in the ordinance. What often happens is the design goes to staff and the property owner has not met with staff in advance. The property owner often does not take the boundary trees into account, so the property owner has to rework their plan.

Councilmember Fries stated her concern is the boundary trees. She asked if this area is in the protected section.

Director of Community Development Parker stated the boundary trees are on the neighbor's property. What Councilmember Fries is referring to is the buffer zone.

Councilmember Fries stated if you do not put the machines in the setback, then the machines will not reach the critical root zones of the trees.

Director of Community Development Parker stated it depends on the size of the tree and the setback.

Councilmember Meinzen McEnerny stated basically, yes.

Councilmember DeJulio asked how often this is an issue with boundary trees.

Director of Community Development Parker stated the issue is more common in areas where lots are smaller. If there is a ten foot setback, the house could be as close as ten feet to the property lines.

Councilmember Fries asked where the boundary trees would be located and where the buffer would be located.

Director of Community Development Parker stated the boundary trees would be on the neighbor's property.

Councilmember Fries asked if machines are kept out of the building buffer, would it help the boundary trees.

Director of Community Development Parker responded yes, it would certainly help. Staff is pretty good at protecting the neighbor's property. The City requires the property owner that submitted the plan to get in touch with the neighbor and try to save the boundary trees, since those trees are on another person's

property. Sandy Springs threshold requirement for a boundary tree is eighteen inches or above. One of the things staff did is research other jurisdictions and only the City of Atlanta has a lower size related to boundary trees. Their requirement is six inches for hardwood trees and twelve inches for pine trees.

Mayor Galambos asked if there is a record of how many boundary trees the City has lost.

Director of Community Development Parker responded no. The City has never turned over the escrow to an adjoining property owner to take care of the trees. The City has always given the escrow back. That would indicate the number is zero.

Councilmember Meinzen McEnery asked how staff is ensuring that the adjacent property owners that have the boundary trees are getting the required notice.

Director of Community Development Parker stated the notice is part of the requirement of getting the plans approved. Something that would enhance the notice is having a door hanger. When staff is in the process of reviewing a set of plans, a door hanger could be placed on the adjacent property owners' doors. This notice will let the owner know boundary trees may be impacted and the City is working to protect those trees. Whenever there is a boundary tree that is impacted as a part construction, but was shown to be saved on the plans, the City issues a citation and requires the escrow to be submitted. There has not been a mechanism for the adjoining property owner to know and this is something staff is working on correcting.

Councilmember Meinzen McEnery asked how staff enforces the notice provision by the developer or the adjacent property owner to the owner of the boundary tree. She knows of no instance in which the owners of the boundary trees or the adjacent property owners have been notified by a builder.

Director of Community Development Parker stated a builder is required to give staff a copy of the letter that they provided to the property owner.

Councilmember Sterling stated just because there is a letter printed and signed, it may not have been mailed. There are a lot of people that do not pay attention and may not be aware of it. If a property owner has new construction on their property, it is not that hard to walk next door to let the neighbor know about the construction and ask them to sign an acknowledgement form.

Director of Community Development Parker stated a door hanger would help.

Councilmember Fries stated she prefers a signed receipt.

Councilmember Sterling stated he prefers a signed receipt, so that property owners are aware of what is happening.

Councilmember Meinzen McEnery stated recently on Meadow Valley there was a demo permit issued and there were two boundary trees on the two adjacent properties which were both landmark trees. There was no letter received by the property owners.

Director of Community Development Parker stated in that case the permit had not been issued. The demo permit had been issued, but not the actual permit.

Councilmember Meinzen McEnery asked if notice should occur during demolition, because that is when the bulldozers are on the property line. The City should make sure to include when a demo permit is issued as well.

Councilmember Fries stated what if the property owner refuses to sign the acknowledgement letter.

**City Attorney Wendell Willard** stated when things are done by law, notification is provided by certified mail with a return receipt required and also sending it by regular mail.

Director of Community Development Parker stated staff was asked if a landmark tree is to be removed from the buffer area, should this go to the Board of Appeals. The Board of Appeals would be for the setbacks around the house. Initially, the ordinance was set up so that landmark tree removal went before the Board of Appeals. This increased permitting time significantly. Ultimately, Council changed the ordinance to no longer require the cases to go to the Board of Appeals.

Councilmember Fries asked if that decision is now made by staff.

Director of Community Development Parker responded yes.

Mayor Galambos stated a quick permitting process is always one of the City's objectives.

Councilmember DeJulio stated the City has a professional arborist. The Board of Appeals members are not professional arborists.

Director of Community Development Parker stated there is a question if there should be protection for landmark trees on large lots. Generally, the trees that staff is seeing are in the range of twenty-seven to thirty-two inches. The previous slide in the presentation included a couple of forty inch trees and even a forty-five inch tree. She referenced a slide of a plan where the blue line represents the original plans that were submitted for permitting. That is where the house was to be and the driveway was in a different place. To the top left of the drawing is a sixty inch oak tree. When the arborist saw this he looked at the plans and stated the house could be moved to save the tree. This is a case where a larger landmark tree was saved based upon plan review.

Councilmember Sterling asked if this is currently part of the review process.

Director of Community Development Parker responded yes. Ideally, staff wants to identify this as part of the preview. In this case, the owner did not come to the City for preview and instead submitted the construction plans. When staff looked at the drawings, they saw there was a large sixty inch tree that could be saved.

Councilmember Fries stated there has been discussion about decision making being a grey area. She asked what the staff checklist is in order to see if a tree can be saved.

Director of Community Development Parker stated if twenty-five percent of the root zone of the tree is damaged, it is considered a loss. The property owner would not be able to count this tree towards the tree canopy cover. The tree may or may not die, but it is considered a loss.

Councilmember Fries stated there should be an opportunity for that tree to see if it will live. Some boundary trees that have had the critical root zone invaded have still lived and the bonds were returned. She asked if the City is encouraging a property owner to save a tree, but if it dies, to remove the tree.

Director of Community Development Parker stated staff is encouraging property owners to save trees and if at all possible, to modify the site plans to save trees. Given how much development is proposed, it is not always possible. It also depends on where the tree is located. In this case, the tree was in the buffer zone, which made it much easier to save.

Councilmember DeJulio asked if the plan can move the house in order to save the tree, or if the tree is allowed to be removed.

Director of Community Development Parker responded yes, the tree can be removed and then replanted.

Councilmember Meinzen McEnery stated the sixty inch oak tree is at least 250 years old, which makes it a historic tree.

Councilmember Sterling asked what the typical life cycle for a tree of that age is.

Councilmember Meinzen McEnery stated along the Chesapeake on the eastern shore there is an oak tree that is 350 years old where a Revolutionary era document was signed under that tree. The Joyce Kilmer Wilderness Park is a National Park near Robbinsville, NC that was saved from development in the early 1900's, actually the last patch of old growth forest in the Appalachian. The predominant trees are tulip Poplars estimated by the park rangers to be over 350 years old planted around the time the pilgrims landed.

Director of Community Development Parker stated the next item deals with the intent of the ordinance. In this case, staff does not recommend changes to the intent of the ordinance. The intent of the ordinance is to save the larger and landmark trees, boundary trees, and ensure canopy cover. The next item regarding intent looks at the character of the tree canopy. There is an area of older homes in Sandy Springs where individuals purchase and demolish the ranch homes and build larger houses. What is often seen from the street is a wooded area. The new character is different compared to what currently exists in the City. If Council wishes to address the character, an ordinance can be written. As it is now, the intent in regards to character is not set up that way in the ordinance.

Councilmember Sterling asked if Council addresses the character question and what a property owner can do on their lot, would this be a constitutional issue of use of private property.

City Attorney Willard stated this could be somewhat subjective. It is difficult to put staff in a position trying to make those types of decisions.

Councilmember Sterling asked what constitutional theory the City can apply regarding land use if a property owner wants to remove a tree to have more lawn in the front yard.

City Attorney Willard stated that issue would be a taking question.

Councilmember Sterling stated there is a point where the City could affect the home value and the use of an individual's private property. The boundary trees are regulated because they affect another person's property as well as the stream area.

City Attorney Willard stated the City does have a constitutional amendment that allows local governments to enforce zoning standards to the size and use of property. The other powers are police powers which are protection of health, safety, and welfare. The City cannot follow those powers outside of zoning. There are limits on how far you can go in making a case that there is a need.

Director of Community Development Parker stated the next question addresses criteria that staff considers when allowing the removal of landmark, boundary, or buffer trees. The criteria include property size and configuration, condition of the tree, existing tree canopy, and factors creating undue hardship. All of the criteria will vary. The weighing would be heavier in terms of size and configuration. Currently, the ordinance allows flexibility.

Councilmember Sterling asked about the undue hardship term and how is it weighed.

Director of Community Development Parker stated cost can be considered a hardship. For example, the cost of putting in a retaining wall to save a tree. The key tends to be with the property size and the configuration. Included in the configuration would be what is the proposed plan and where is the tree located in relation to what is being proposed.

Councilmember Sterling asked what is the system by which the City says the property owner and would be considered under an undue hardship.

**Councilmember John Paulson** stated an example is a heavily wooded lot with large trees and the City enforces the ordinance that no large trees can be removed. The property owner could not construct a house on the property.

Director of Community Development Parker stated consider the case of the sixty inch tree, if the property owner came to the City and the City said the requirement is to construct a retaining wall that costs \$100,000. The City would evaluate whether a retaining wall costing \$100,000 for a \$4 million house is really a hardship. The hardship is somewhat subjective.

Councilmember Fries stated sometimes on a smaller lot there is not enough space to move the home. That would be considered a hardship.

Councilmember Sterling stated he does not fully understand the term hardship. Just because someone says they have a hardship, he does not want to default to the City automatically agreeing with that.

Director of Community Development Parker stated the process is subjective. Staff also allows the property owner to hire a certified arborist to show the tree is a threat to the home.

Councilmember Sterling asked if proof of hardship is a letter or a report.

Director of Community Development Parker stated it is a report, but in the form of a letter. The offsite mitigation of larger lots should be prohibited. The City does not have offsite mitigation for larger lots anymore, since there are places to plant the trees. There is rarely a case of clear cutting in the City. There have been some instances, but rarely. To neighbors and people that drive down the street it is often referred to as clear cutting. The Woodvale property was referred to as clear cutting. There is a lot located at Mystic Drive where all the trees were cleared from the front yard in order to get the plan done. This was not clear cutting and trees at the back of the property were saved. It is hard to look at a lot and tell where the lot lines are.

Councilmember Meinzen McEnery stated the question is if offsite mitigation on larger lots should be allowed and should clear cutting be prohibited? She asked if in Director of Community Development Parker's opinion the current tree ordinance allows both of those items. Does the ordinance allow someone to pay into the tree bank fund if they want to have the whole site clear cut, no matter how large or small? If someone wants to clear cut trees boundary to boundary on a property, except if there is a stream, is that allowed in the current ordinance?

Director of Community Development Parker stated in regards to the mitigation, technically yes. One would be able to plant trees offsite. Yes, one can clear cut. However, the individual has to obtain a permit from the City. She referenced a lot plan that a property owner submitted. If the property owner requested to clear cut the entire lot, staff would not have approved that. There is no reason the owner

could not keep trees in the rear of the yard. The limits of disturbance and grading are always delineated on the plan. There would have been no need to clear cut, the lot and staff would not have approved it. There have been lots in the City that have been clear cut because it was impossible to save any of the trees.

Councilmember DeJulio asked how many clear cutting occurrences the City has had since Director of Community Development Parker has been working with the City.

Director of Community Development Parker stated she knows of one particular occurrence where the house is currently under construction. Due to the size of the house and parking the owner desired, every tree on the lot had to be cleared. The property owner will be replanting trees on site.

Councilmember Meinzen McEnery asked what the zoning or size of that lot is.

Director of Community Development Parker responded she does not recall the size of the lot, but it was a smaller lot.

Councilmember Meinzen McEnery stated potentially the property was zoned R-4. Trees were clear cut boundary to boundary on West Belle Isle across the from the Kroger when four houses were built.

Director of Community Development Parker stated R-4 zoning has a seven foot side yard setback. She believes the property being discussed has a ten foot side yard setback.

Councilmember Paulson asked if a special review of the plan can be put in the ordinance for when clear cutting is anticipated.

Councilmember Sterling stated that is already being done.

Councilmember Paulson stated what he heard is that clear cutting is not specifically prohibited in the ordinance; it is just rare. He asked if language should be included in the ordinance that states if a property owner plans on clear cutting their property, they have to receive a special evaluation from the City.

Mayor Galambos stated suppose there is a small lot with not many trees on the outside boundary of the lot and the trees are where the house is to be constructed. What would the alternatives be?

Councilmember Paulson stated he is not saying to preclude anything, but asking when the situation comes up if staff should acknowledge that with a special review process as part of the ordinance.

Councilmember DeJulio stated if the Community Development Department has to approve a clear cut permit and this occurred only once should the language be added in the ordinance.

Councilmember Meinzen McEnery stated how did it happen is the real question.

Councilmember Paulson asked if clear cutting is being defined as 100% removal of trees.

Councilmember DeJulio responded yes.

Councilmember Fries stated the clear cutting for the home was approved.

Director of Community Development Parker stated the property owner clear cut the trees with a land disturbance permit. There was no way to save the trees, given where they were and what the plan proposed.

Councilmember Paulson stated he wants to make sure that if any more properties are clear cut that it is not a surprise to staff.

Director of Community Development Parker stated if the property owner does not get a permit in advance, the owner is cited and issued a fine. Even in a case such as this sites are never clear cut, because staff is notified before this ever happens.

Councilmember Sterling asked if a property owner decides to not abide by the City ordinance and cuts down a lot of trees, what is the fine system in place.

Director of Community Development Parker stated the fine is \$1,000 per tree and also a penalty is paid and that goes directly into the tree bank funds. A majority of the money in the tree bank fund comes from fines and penalties.

Mayor Galambos asked if the fines for tree removal are mostly from commercial properties.

Director of Community Development Parker stated the fines are usually from residential lots.

Councilmember Sterling asked if City staff would know how many trees were on a lot prior to them being cut down in order to fine the individual.

Director of Community Development Parker stated normally all the trees will be cut down first and then the stumps will be ground. A lot of noise is made when trees are cut down and the City receives calls from nearby residents during the process of the trees being removed. There has not been an incident that she is aware of that trees were removed from a property and the stumps ground without the City being aware of it. Normally, the City is able to catch the individual in action.

Councilmember Sterling asked if the fine is \$1,000, no matter the tree size or where it is located.

Director of Community Development Parker stated a permit is not required if a tree is cut down that is less than eighteen inches. Only a tree that is eighteen inches and above would require a permit.

Councilmember Sterling asked if regardless of the size of the tree the fine is \$1,000 per tree.

Director of Community Development Parker stated the fine is \$1,000 per landmark tree that is cut down without a permit.

Councilmember Sterling asked what if a twenty-seven inch is cut down.

Director of Community Development Parker stated for trees that are cut down without a permit that are eighteen to twenty-seven inches in size the fine is not \$1,000.

Councilmember Sterling stated there are people that are not abiding by the City ordinance. He wants them to be penalized above and beyond for not following the rules.

Councilmember Fries stated maybe the fine should be \$1,000 per tree for trees eighteen inches or larger that are cut down without a permit.

Councilmember Sterling suggested a fine of \$2,000 for the larger trees. He asked if there is anything in State law that addresses the level of fines for trees.

City Attorney Willard stated if a misdemeanor standard is being used, a limitation would be a fine of \$1,000.

Director of Community Development Parker stated staff will review the fine amounts and bring recommendations back to Council.

City Attorney Willard asked if the fines are based upon violation of the ordinance.

Director of Community Development Parker responded yes. The fine also includes a recompense, so one way of dealing with the violation is by increasing the recompense.

Councilmember Sterling stated it may be cheaper for the property owner to cut down the trees without a permit, receive the fines and pay them.

Director of Community Development Parker stated that is usually not the attitude people take. Staff does not see the same individuals receiving tree removal fines. Staff presented the tree planting proposals to Council and they were voted on. The plan is to bring this to Council every year for the upcoming year tree planting and conduct a tree canopy study. The data are available every three years and once it is available, staff will review it and conduct a study. Other recommendations are in regards to increasing the minimum size of replanting and reducing ambiguity to get rid of the grey areas in the ordinance. There are a couple of areas in the ordinance that allow one to choose which method to use for replanting and staff wants to remove that. Staff recommends revising the replanting tree size from 2 to 2 ½ inches. The question she has received is why that number is not closer to four inches. Staff had dialogue with the urban tree canopy group of the U.S. Forestry Service in regards to increasing the size. They recommended the City not increase the size from 3 to 3 ½ inches because there is a growth curve and smaller trees do better. However, if the number is changed to 2 inches, the trees need to be staked because they fall over. Staff recommends the tree size to be 2 ½ inches to put this number in sync with the zoning ordinance. The certified arborist can submit a condition of evaluation as practice and put that in the ordinance, and clarify the tree list.

Councilmember Fries asked what the tree list is.

Director of Community Development Parker stated some species of trees are better choices for planting. Understory trees are currently allowed to be counted towards canopy, even if they have no reasonable expectation of becoming canopy trees, because there are larger trees that will keep them small. Staff would like to modify the canopy replacement calculation, particularly in regards to landmark trees. As the ordinance is now, it allows a replanting choice for the property owner, which is not clarified. A large oak that is removed may be replaced with one or two 2 inch trees when this is not commensurate with what is being removed. If the changes are embraced in concept by Council, staff will create an ordinance amendment, receive public input, then bring the ordinance back to Council for action.

Councilmember Sterling stated his constituents are confused on what to do if they have a dangerous tree in their neighborhood. The City website does not direct an individual to find out what to do with a dangerous tree. He wants the process to be easy for the citizens.

Director of Community Development Parker stated part of the changes included adding language in the ordinance so people can know what to do about a dead tree. The removal of the tree is in the ordinance, but not allowing a private arborist to come and view the tree. If the City arborist views the tree and states

it looks to be in good shape, the property owner can still hire their own arborist to refute what the City arborist says about the tree.

Councilmember Sterling stated many citizens do not want to read through the whole ordinance in order to figure out what to do about the removal of trees.

Councilmember Fries stated there are many people that do not want large trees ten feet off the corner of their house, because it is destroying the home's foundation or the tree may fall on the house.

Director of Community Development Parker stated this information can be included on the City website and staff will develop a brochure the City arborists can carry with them stating what citizens can do about trees.

Councilmember Fries stated trees that were planted many years ago by an individual should be able to be removed by that person. She asked what she would have to do to remove three landmark trees from her property.

Director of Community Development Parker stated staff would review the trees. If the trees look to be in good health and there is no reason to remove the trees and they are landmark trees the City would not issue a permit. If Councilmember Fries takes the position the trees will fall on her house and they are not safe, staff will allow her to hire an arborist to look at the risk associated with the trees.

Councilmember Fries asked if she will not be able to remove those trees from her property, even if her property has 100% tree canopy.

Director of Community Development Parker responded not if they are landmark trees. If the trees are less than eighteen inches they can be removed.

Councilmember Meinzen McEnery thanked Director of Community Development Angela Parker for working with her and Nancy Leathers regarding the slide presentation. She asked the Mayor to allow her to make a presentation as well. She has been on the Council for eight years and working with Council, staff, and citizens in District 6 to protect the City's tree canopy. She accepts everything that was in the staff presentation, but has comments to add. The first item addressed by the framework for staff to review was the existing tree canopy. This question was read or interpreted by staff to focus on the percentage of tree canopy coverage. That wasn't what we meant. The way to save existing trees as part of the ordinance is what is so important to so many residents in the community. Protecting existing canopy coverage was not addressed in staff's report tonight. Since Nancy Leathers is in attendance, Council can ask her questions. The overriding perspective is to getting a balance in the tree ordinance. Currently, the tree ordinance does allow clear cutting and allows 100% offsite mitigation. She is glad to hear this is not happening everywhere. She wants a caveat put in everything she is presenting tonight. She is only talking about Section 6 of the tree ordinance, which deals with new construction. She is only having this apply to lots that are 18,000 square feet or larger. She is focusing on the size of the lots, because it is the size of the lots that determine how much tree canopy, existing or to be planted, the site can accommodate.

Councilmember Sterling asked if Councilmember Meinzen McEnery is referring to the lots as they are currently constituted or the residual rights that are R-3 where there may be larger lots.

Councilmember Meinzen McEnery stated she is referring to the size of the lots and not zoning. The City Attorney and she talked about this and Council will probably be comfortable with the size of the lots being a criteria. The size of 18,000 square feet or larger is R-3 all the way up to R-1. Staff will be

coming back with changes that have already been discussed and she would like to add a few more with Council's consensus. In Section 6 for lots larger than 18,000 square feet grading should be limited.

Mayor Galambos stated she would feel more comfortable with this change being to R-2 and not R-3.

Councilmember Meinzen McEnery stated she put her six bullet points in priority order. The first bullet point will have more discourse than the suggestions at the end. The dialogue will occur in the future when the changes come back to Council. The City has had 6 ½ years of this ordinance and staff has done a great job of responding, but Council needs to get all the groups together on this. She envisions a lively dialogue with the development community. She has already heard that the Council for Quality Growth wants to know where the City is on this. It is going to be an exciting and beneficial time for the community to have the discourse on what the residents, citizens, and development community feel they can live with and need in Section 6 of the ordinance. The focus is on how to preserve some existing trees and provide for adjacent property rights as well as the property rights of the lot under development. She suggests limiting the grading on infill residential property on lots greater than 18,000 square feet to no more than 60% of the property. That will include whatever 60% of the property is when looking at R-3. The R-3 zoning has ten foot wide setbacks. In discussions with Nancy Leathers and Director of Community Development Parker they recognize that the setbacks need to be preserved, which is not feasible with the current ordinance. The setback on an R-3 zoning lot with a sixty inch tree may be able to be preserved. The 60% number may need to be increased or decreased following public input sessions.

Councilmember Sterling stated grading is addressed in the development ordinance, not in the tree ordinance.

Councilmember Meinzen McEnery responded yes, but grading can kill trees.

Councilmember Sterling stated she was only referencing Section 6 of the tree ordinance and asked if we are now talking about changing the development ordinance.

Councilmember Meinzen McEnery stated we are trying to save trees and that should be in the tree ordinance. If Council finds on the last item which is to put a notice of a building permit applied for in the development regulations, that will be fine. The R-1 zoning property owners tonight did a great job advocating for the preservation of the adjacent property rights. R-1 has twenty-five foot setbacks and fifty foot rear setbacks. These are the only size lots that would prevent any equipment and grading on the side of the property. That does not preclude an owner going to the Board of Appeals for a variance for pools. This would make sure the side setback on R-1 does not have equipment and is not graded. There was discussion this evening that the typical house is portico shares and tennis courts. There are lots all over the 30327 zip code that are 6 ½ acres. There is a similar argument for limiting grading on the smaller lots to no more than 60%.

Councilmember DeJulio asked why is Council spending so much time talking about clear cutting when the Directory of Community Development Parker states that as long as she has worked for the City she knows of only one lot that has been clear cut.

Councilmember Meinzen McEnery stated the reason is because of citizen concerns.

Councilmember Fries stated she understands these arguments and this topic has been discussed many times since then. She appreciates the work Councilmember Meinzen McEnery had done regarding this ordinance. She also believes in people's property rights. There has been discussion regarding the adjacent property owner rights and down gradient property owner rights and she does not consider these property rights.

Councilmember Meinzen McEnery stated Councilmember Fries did not listen to the citizens that spoke this evening.

Councilmember Fries stated she listened to the citizens, but does not like the words that were used. In earlier discussions with Councilmember Meinzen McEnery, when there was talk about the intent of the original Council, she did not think about tractors going into the setback. That can cause problems with the boundary trees. She asked if it would be a hindrance to say the property owners cannot place machinery in the setback and to say if they want that area cleared out, they will have to do it by hand.

Director of Community Development Parker asked if this would be for machinery in the setback for all lots.

Councilmember Fries stated she is asking the question generally.

Director of Community Development Parker stated this is definitely a hindrance when the setback is ten feet and probably fifteen feet as well. It is easier to do when there is a twenty-five foot setback. The property owner needs to be able to get positive drainage away from the house, so they will need to grade in that area.

Councilmember Sterling stated at this point we are talking about R-3 zoning of an 18,000 square feet lot. With the 60% of grading limit, will the grading be a large hindrance, because the owner would lose a large percentage of available land to work with.

Councilmember Meinzen McEnery stated 40% is ungraded.

Councilmember Sterling added quite of bit of the property would be unusable. This would be the City stating a property owner has to have a certain amount of space to reconfigure.

Mayor Galambos stated she thought this agenda item would be preliminary suggestions from the excellent presentation. Council could gradually move forward to consider each one of the recommendations during public hearings. This is not the time to get into all the details.

Councilmember Meinzen McEnery asked if she may have an opportunity at the next Work Session to continue her comments.

Mayor Galambos agreed to allow Councilmember Meinzen McEnery to make her presentation at the next Work Session.

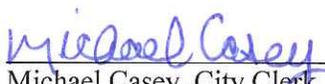
## 2. City Center Street Network

This item was moved to the November 19, 2013, Work Session meeting.

There being no further discussion, the meeting adjourned at 9:59 p.m.

Date Approved: December 3, 2013

  
Eva Galambos, Mayor

  
Michael Casey, City Clerk