

said that they used Mike Labadie. Mr. Schroeder suggested that someone else should look at it.

Mr. Hooper asked what ROW improvements were proposed. Mr. Windingland advised that there were some storm sewer and improvements at the south end. There was a taper that would go to the emergency entrance. It would be minimal based on the need to install the two connections. Mr. Hooper noted that the southern entrance was existing. Mr. Windingland said that there was not much. Mr. Hooper said that the Preliminary approval was conditioned upon providing a center left turn lane at the northern entrance, but they would now not do anything. He felt that there were other things they could do. He asked why they could not eliminate the piece on the west side of Livernois at the southern entrance and extend the center turn lane. Mr. Windingland was not sure that would alleviate anything. Mr. Hooper said that it would provide more stacking for someone going southbound in the center turn lane. It sounded like due diligence was missed all over, and he asked what ROW improvements they could do to mitigate the problem. Mr. Windingland said that the center through lane would still have the existing bypass lane, but he saw the point. Mr. Hooper suggested that there might be other options.

Chairperson Brnabic asked the applicants if they agreed to table the matter. Mr. Windingland said that they did.

MOTION by Gaber, seconded by Dettloff, in the matter of City File No. 17-019 (Cumberland Village Site Condominiums), the Planning Commission hereby **tables** the request for **Recommendation of Approval of the Final Site Condominium Plan** so the applicant can further investigate options regarding the northern entrance as discussed.

A motion was made by Gaber, seconded by Dettloff, that this matter be Tabled. The motion PASSED by an unanimous vote.

DISCUSSION

2019-0027 Tree Preservation Ordinance Update

(Reference: Memo prepared by Ken Elwert, dated June 5, 2019 and Draft Ordinance had been placed on file and by reference became part of the record thereof.)

Present for the discussion were Ken Elwert and Matt Einheuser, Parks and Natural Resources for the City.

Mr. Elwert advised that the memo and draft ordinance in the packet talked about the changes made based on the initial joint Planning Commission/City Council meeting on January 29. They had been working on revisions with the Planning Dept. and the City Attorney for several months. They tried to make things simpler, to incentivize the preservation of larger trees in development and to increase the percentage of trees preserved. The first major change proposed was to the land covered under the Ordinance to include all land in the City except for pending plans for land platted prior to August of 1988. The second change was to go from 37% to 40% of trees that needed to be preserved. Also, that would apply to all zoning districts instead of just one-family residential developments. The current code called for a one to one replacement of trees. If there was a 30" tree, it could be replaced with one two-inch tree, or payment could be made into the Tree Fund. They were recommending creating a class called Specimen Tree, which would be 24" or above depending on a tree's growth. They were proposing a 50% replacement of the larger trees. If a 24" tree was taken down, it would require replacement of 12" dbh or six two-inch trees - either planting or paying into the Tree Fund. They were not recommending removing any current exemptions. A concern had been brought up at the joint meeting about removing exemptions for residential and limiting the ability for a landowner to take down a tree on his own property. There were not changing that. They were changing three classes to two. Currently, there was a landmark tree class and an historic tree class, and they were merging those classes. A landmark tree was of significant natural historic value. The Bebb Oak was a landmark tree. The requirement for those would be replacing at 100% instead of 50%, but someone would still need a permit. Chairperson Brnabic called a speaker forward.

Ralph Nunez, Nunez Design, 249 Park St., Troy, MI stated that he had reviewed the proposed ordinance. He understood the landmark value and the increase to 100% for replacement. If a property owner saved a landmark tree, he asked if a deduction would be taken from what had to be replaced. For example, if he removed 100 trees and owed 100 trees but he saved two landmark trees at 40" caliper, he asked if he would get a credit. He mentioned the tree survey requirements on page nine, including the shape and dimensions of the property and the location of the existing and proposed structures or improvements. It stated that the location of proposed structures "must be staked" on the site. He asked when that would be done, because normally, if someone did a survey, they would not be clearing the site to put in stakes to show the roads and structures at that point. He claimed that it would be very expensive. He knew that the purpose was to preserve trees, but he thought that they

should be considering the quality of trees. He understood the increase to try to save all the trees, but he felt that quality should be very important. The idea was to keep trees on site. If that could not be done, they had to be placed elsewhere or into the Tree Fund. The problem was if there was 100% replacement for a landmark tree plus 50% for specimen trees plus the regular one-to-one replacement, plus Planning requirements for buffers on each side, right-of-way (ROW) trees and detention pond requirements, there was not enough room on a development to put all those trees, so there had to be payment into the Tree Fund. The cost of a tree was \$216.75, and he was not sure if that would stay the same, because it stated "fair market value." He noted that City Council could grant a Variance if there was a hardship, and he said that he would like to know that process.

Mr. Elwert clarified that they did not offer a credit for preserving a landmark tree. Their default position was that the expectation was to try to save as many trees as possible, whether landmark or otherwise. Regarding the staking question, they did not change any language from the code, because it had not been brought up as an issue. He said that they would look at the language and see if there was a burden and consider whether it made sense to change it. As to the quality of trees, they had seen a desire by developers to get more credit and to not count very poor or poor trees in a survey. Staff's view was that whether poor or very poor or medium, the trees still provided the same benefits to the community, which was water retention, aesthetics, carbon sequestration and a variety of other things. They attempted to clarify what dead or diseased meant further by defining it as a tree that could be readily observed by professional Foresters that would die within two years. That was a conscious recommendation by staff and to not have to get involved and decide if a tree was poor or medium quality. If it was dead or would die within two years, it would not be counted. Mr. Nunez had mentioned how other City elements came into play during development. Mr. Elwert stated that it was a challenge. The goal was to keep as many trees or plant as many replacement trees as possible. He agreed that there were competing interests. They reviewed the percentage and the replacement credits, and they were still not anywhere near the top averages of other communities in the State. They felt that it was a fair increase; it did not go dramatically from 40% to 80% as some communities had done. Many other communities had a stronger tree recovery process, and the City was about average.

Chairperson Brnabic mentioned the question about a process for a Variance. Mr. Elwert said that it was a City Council issue. There was a

process in place currently, and a developer would have to go through Planning and City Council to request a Variance.

Ms. Morita said that she needed to understand the end game. She asked if it was to regulate every single residential parcel that had trees on it. Mr. Elwert stated that it was not. The proposed code would not change any requirements for individuals who owned a small parcel of an acre or less. They could still take down three trees. Ms. Morita said that the way she read it, there was an exception for small, residential parcels except that "the exception does not apply to trees located in the public right-of-way or to trees designated as landmark trees pursuant to Division 4 of the Article." She said that it did apply to residential lots to the extent that the trees were in the ROW (street trees) or larger City designated trees. She asked the qualification to put a tree on the City's big tree registry. That was not contained in the proposed Ordinance.

Mr. Elwert said that they had not modified anything regarding ROW trees, and the requirement was the same. As to how to get on the landmark tree list, a tree could be nominated, but the landowner had to accept being on the list. Ms. Morita said that it was called the Big Tree List in the ordinance, and Mr. Elwert said that it was previously called that. Ms. Morita asked if the only way landowners who had a big tree in the middle of the lawn would be put on the list was if they voluntarily accepted regulation. Mr. Einheuser said that was correct, and Ms. Morita asked why anyone would voluntarily accept regulation. Mr. Einheuser said that they might want to permanently protect the tree after they passed or something. If there was a new landowner, it would be a question for the attorney. Ms. Morita said that if she lived in her house for 50 years with her beautiful Tri color Beech that she did not want the next landowner to be able to chop down under any circumstance, she would go to the City and ask to be on the list. Mr. Elwert said that the City would have to accept that process. Ms. Morita said that was not explained in the ordinance. Mr. Elwert agreed that it was not as an operational issue. Ms. Morita said that the problem was that it was not explained, and there were no rules of procedure pertaining to it. If they adopted the ordinance the way it was written, it could be interpreted differently in a week. If they wanted the Big Tree List to be a voluntary concept, the language needed to be in the ordinance - what the list was, what the qualifications were, etc. Council would need to understand what was being adopted. She understood that it was for parcels that had not been developed, but she wondered about a situation where, hypothetically speaking, there was a greenhouse on Crooks Rd. that had been shuttered. There were big trees and technically, it had been developed, but the way the definitions sat in

the ordinance, that parcel would not be subject to the ordinance, because it had been developed.

Mr. Elwert said that he understood that view, and they could get a written clarification from Mr. Staran. It was his interpretation that it would be covered. Ms. Morita said that she would have to respectfully disagree with Mr. Staran, which she did not do often, but if they wanted it to apply to the redevelopment of parcels in addition to undeveloped parcels that needed to be clearly and plainly stated. People reading the ordinance would not think that it applied to redevelopment of parcels.

Mr. Einheuser offered that at the beginning under Applicability of Article, he thought it addressed it because it said "or redevelopment." Ms. Morita said that it read, "Except that this Article shall not apply to land included within pending site plan, plat, condominium or other development or redevelopment plan." Mr. Einheuser said that was for pending items. Ms. Morita said that the first sentence said, "This Article shall apply to all land in the City which is undeveloped." Mr. Einheuser said that it was their intention to include redevelopment. Ms. Morita said that it should include "which is subject to redevelopment" at the beginning.

Ms. Morita asked where the specimen tree list in the back came from. Mr. Einheuser said that it was based on other communities that had a similar tree ordinance. The City's Arborists went through it, and it was pretty consistent with other communities, and that was how they decided on the sizes. Ms. Morita had asked about the list of trees, not the sizes. Mr. Einheuser said that the trees were identified to be specimen sizes below the catch-all of 24". Ms. Morita pointed out that they would recognize 18" Hickorys and 10" Chestnuts, but Tri color Beeches were not on the list. Mr. Einheuser said that it would be for the 50% dbh. It was for designation of a specimen tree. The Beech was still regulated if it was over six inches. It would become a specimen tree at 24" if not on the list. It was only in regards to replacement.

Ms. Morita recommended that Mr. Staran looked at the numbering in the Ordinance, which was not consistent. She gave an example of Section 126-262, the first subsection was (1). However, on the next page for 126-266, the first subsection started at (a). If the first section number was a number, she thought that the next subsection should always be a letter otherwise it was too confusing. They would have 126-263 (1) and maybe (a). She just wanted to make sure that the numbering was consistent throughout.

Ms. Morita said that going back to her big tree and hypothetically not letting anyone else cut it down, she wondered if they would be concerned about impairing property value and the ability to sell or transfer property, because one owner put a restriction on the property. If someone could not take that tree down, and it was tearing up a driveway and making a house unsaleable, she wondered if there would be an out for that. The City could say that even though the homeowner decided she wanted the big tree put on the list, now that it was 30 years later, it was destroying the property value and make the house uninhabitable, and an ambulance could not come up the driveway. If someone wanted, how could he or she get the tree off the list. She felt that it was something they needed to look at. Mr. Elwert said that there could be a clause stating that someone would have to come back and show a hardship. Ms. Morita felt that the City should be able to remove trees from the list if it was felt that they were a danger or something. If there was a big tree in a residential neighborhood of quarter-acre lots, and it was a hazard, but the property owner did not want to take it down because of the restriction, she felt that the City should be able to take it off the list. The City should not make the property owner have to appeal it. She would also add that if it was a property owner coming in to ask for a tree to be on the list, that person should have to pay into an escrow for the evaluation and the cost to have it put on the list. She did not want the taxpayers to have to pay for others to put a restriction on their own property.

Chairperson Brnabic noted that there had been a question about a variance process. She asked if there was a process involving Council currently. Ms. Morita said that there was a process described in the ordinance in the back in Division 4, Section 124-464. There were conditions and findings that had to be made by Council to grant a variance. She would think that was better suited for the Zoning Board of Appeals as opposed to Council. Ms. Roediger explained that the proposed ordinance did not sit in the Zoning Ordinance. Chairperson Brnabic had just wondered if there was a process currently in place. Ms. Morita said that the process was there; it had just been renumbered. Mr. Elwert said that he had seen very few variance requests, because they tried to work with developers as much as they could to accommodate.

Chairperson Brnabic had noticed that the nomination process for historic, now landmark, trees had been removed from the ordinance, but it was still referred to in 126-461. She asked if any person could still nominate a tree within in the City. Mr. Elwert said that the intention of removing the process was to remove it from HDC and assign the operational process to staff. His department had standard operating procedures and ways they

implemented specific things. The process was removed from the code, because it was not attached to a formal HDC committee. Someone could still nominate. There was one tree on the list, and the HDC had never been asked about getting a tree on the list. He maintained that it made more sense to have it go through staff.

Mr. Hooper felt that Mr. Nunez was spot on to the point about re-staking. He referred to 126-359, Tree Survey. He pointed out that the purpose was to find out where the trees were, but a developer would have no idea how a site would lay out until the trees were determined. It would be impossible to do what the ordinance was requesting, and he felt that it definitely had to be rewritten to reflect reality. He said that he looked for the definition of landmark, specimen and invasive species. There were some in the back, but he wondered if they could add a definition at the front or state a section to find a definition. Regarding people who could actually do the survey, he joked that they were picking on his poor, impoverished, out of work registered engineers. He asked if they could not do a survey any longer. Mr. Elwert said that the people listed were specifically qualified for trees. They found it that way in other codes. The feeling was that a Landscape Architect or Certified Forester were preferred to evaluate. He indicated that it was not non-negotiable. Mr. Hooper felt that there were some PEs who could certainly do surveys. He asked about bats. He thought that there should be something in the ordinance to comply with non-removal of trees at certain times when bats were in season. Mr. Elwert agreed that there were Federal laws involving Federal funding that required that tree removal only be done at certain times. It did not come up as a discussion for the local code. He said that they had not seen any other local codes that had any requirements for bats and tree removal. Mr. Einheuser said that they added something about oak wilt, so he suggested that they could do something along those lines. If they went that route, Mr. Elwert also suggested that it could be more of a recommendation. They would have to enforce and inspect, which would become challenging. Mr. Hooper concluded that it would only be important if Federal money was involved; otherwise they did not care about the bats. Ms. Morita thought that the reason Mr. Hooper was not finding it in any other ordinances was because those communities had not gotten around to revising their ordinances. That law was only a few years old, and it was not on the top of the list for municipalities. Instead of being a follower, she suggested that they should be a leader and add the language while they were revising the ordinance.

Mr. Hooper referred to the diameter of a specimen tree, and he read 8" Spruce (diameter at breast height). If someone planted a Spruce tree,

within five years, they would have specimen trees. Mr. Einheuser said that their Foresters were looking at some of the numbers. He considered that it could be a typo, so he would check it. Mr. Hooper felt that it seemed low. A ten year-old subdivision would have a lot of specimen trees. If someone never trimmed an arbor vitae, within 15 years it could be 18" diameter. Mr. Elwert reminded that the intention was to shift the focus to larger trees. He agreed that they would look into the 8" listing.

Mr. Schroeder recalled that Tienken Rd. had been held up and the scheduling was off because of bats and a Federally-financed project. Regarding the Bebb Oak, he felt that its protection would be covered where it was, but he wondered what would happen if it was on a half-acre with a house on it. According to the ordinance, it would not be covered. Mr. Einheuser said that it was a landmark tree, and that was why they split the specimen tree away from the landmark tree. They wanted to have an extra level of protection for that type of scenario. Because it was a landmark tree, someone would have to get a tree permit. The exceptions, such as a minimal number of trees to be removed, would not apply to landmark trees.

Mr. Gaber said that regarding specimen trees, he believed that a qualitative element was important. He had a hard time saying that an 18" Silver Maple or 18" Arbor Vitae should get special protection and should be treated as a higher class of regulated trees. He said that there was no qualitative element, and it was just size that mattered. He had a problem with that. He had seen ordinances in other communities that exempted certain trees from being regulated because they were considered junk trees. Mr. Einheuser claimed that the ordinance had that language. Mr. Elwert said that a junk tree or an invasive tree would require a one-for-one replacement, no matter what the size. The quality of trees was a very subjective judgment. Two of their Foresters, who had 60+ years between them had a hard time deciding on the difference between a very poor and a poor and a medium tree. There were not clear standards industry wide for that. They were trying to encourage protection of larger trees. Mr. Gaber said that some communities looked at the specimen of the tree and made a determination about it being worthy of extra scrutiny and protection. Mr. Einheuser pointed out that below the table on page 16, the section talked about species deemed to be a nuisance by the City not being considered specimen trees, and they would require one-to-one replacement. Mr. Gaber asked why there was not a list of those trees. Mr. Einheuser said that there would be a list, but it could change, so it would be housed within the department. Mr. Elwert said that it would also be on the web site. Mr. Gaber asked if they would look at the list of specimen

trees. He did not see how Arbor Vitaes could be considered specimen trees.

Mr. Gaber said that it seemed that certain developments in the community over the past had used the Tree Fund as an excuse to take the easy way out instead of replanting on site. He felt that they should encourage replanting on site. He thought that the language regarding the Tree Fund was pretty loose. He read, "Where it is not feasible and desirable to relocate or replace trees on site or at another approved location in the City, the tree removal permit holder shall pay into the city tree fund." He asked who determined whether it was not feasible or desirable. He thought that it was very broad language that was open to interpretation. Mr. Elwert said that as Mr. Nunez had referred, there was a lot of interplay between the different codes and departments. There were drainage and roadway issues and other things to be worked out. The question became one for developers and whether they wanted more trees in a development or not. It became complex and challenging to try to put another incentive in the code to encourage developers to plant more than they put into the Tree Fund. The other challenge was people taking down residential trees on small parcels. Occasionally, developers had said that they would not take down a tree at the beginning, but if a homeowner did not like it, he or she could take it down in six months themselves. Encouraging keeping trees planted was a way around any replacement value, depending on where it was on a property. Mr. Gaber asked how they would encourage that. For example, for the Cumberland Village sub they discussed, if that fell under the TCO, they would have had to remove and replace everything. There would not be much room for preservation on that site. He asked how they would encourage someone in that position to save trees on site. He asked what the mechanism was in the ordinance to encourage or incentivize that. Mr. Elwert did not believe that there was anything specifically that incentivized that versus putting money into the Tree Fund. Mr. Gaber said that his vote would be to do what they could to try to encourage replanting on site rather than making it easy to pay into the Tree Fund, which he thought was what the ordinance did. Mr. Elwert said that most developers did try to save trees, because they recognized their value, but he agreed that there were those who would try to find a way around it. He asked Mr. Gaber if he had a specific recommendation to incentivize that. Mr. Gaber said that he did not, but he did not think it was a novel concept to other communities.

Mr. Schultz asked the current balance in the Tree Fund. Mr. Elwert said that in 2016, it was \$1.7 million. They were targeted for the current year to be at \$900k. They were spending significant funds and planting trees at

Innovation Hills and on Auburn Rd. as well as street trees for residents. They were planting trees in quite a few different areas. Mr. Schultz asked the typical financial income into the fund annually. Mr. Elwert was not really sure, but he thought perhaps \$30-50k. Mr. Schultz asked how that fund would be affected going forward. Mr. Elwert said that it was hard to balance. If development slowed down, even though there would be more funds coming into the Tree Fund, more larger trees would be saved. There was a chance it could increase based on the ordinance, but it depended on increasing development (or not). They had not run a fiscal scenario. Mr. Schultz just wondered at what point the number became unmanageable and high. He explained that there was a law firm that was well known for suing municipalities who had large funds. He said that the only people who benefitted from the fund was the law firm. He was thinking about them trying to incentivize and balance and all of a sudden, the fund could start snowballing out of control, and then they got sued and tax dollars were going out. There would be taxpayers who were not benefitting, because they saddled themselves to an ordinance that was too far in one direction. He was not saying that it was yet, but it was the worst case scenario he would hate to see happen. They would have exposed themselves to a problem.

Mr. Elwert said that they were looking at other ways to encourage the planting of trees in other areas that would draw the fund down. Council had passed a minimum fund balance policy for most of their funds. Their goal was not to have the fund grow and grow. It paid for some of the Forestry staff expenses to plant trees, and, that was almost \$200k per year.

Mr. Reece stated that he respected Mr. Nunez's earlier comments. One thing that intrigued him was about incentivizing developers to save landmark trees. He thought that they all agreed that having landmark trees within the community was a good thing. There might be some value to incentivizing a developer to save such a tree that was of particular value to the community. He suggested that they just considered that. He thought that great work had been done on the ordinance, and he did not think that they had gone overboard. He thought that they had found a good middle ground without going so far left.

Ms. Morita asked about a property owner trying to flout the rules, where they topped a tree and cut off all the branches, but the tree was still there. They had done it in front of a commercial property, and people could see all the store fronts. She asked if there was anything they could put into the ordinance to address that. She said that technically, the tree was still

standing. She noted the property on the west side of Rochester Rd. by C. J. Mahoney's. There were trees still intact, but they had been topped. She asked if they could add something that gave them some teeth. Mr. Elwert asked if she wanted a clause that would limit what commercial could do with certain tree elements. Ms. Morita agreed.

Ms. Roediger said that she knew exactly what Ms. Morita was referring to, and she concurred. Ms. Morita brought up the junk tree list. She said that the ordinance read "junk tree list as determined by the City." She felt that connoted that it was a resolution that was passed by Council. If there was going to be such a list, her expectation would be that if there was going to be a change to the list that it would have to be presented to Council to approve. Ms. Morita reminded that the only group who could make a decision on behalf of the City was City Council. Mr. Elwert said that it could be determined by staff. Ms. Morita said that she did not want someone challenging what was approved or not, because Council did not approve it by resolution.

Chairperson Brnabic thanked Mr. Elwert and Mr. Einheuser for doing such a good job with the amendments. She hoped they were happy with the feedback from the Commission. She asked if they planned to return with the final draft. Mr. Elwert said that it had been a courtesy review, and they heard the comments. They could bring it back, although he was not sure another meeting was necessary. Ms. Roediger said that it was part of the general code so technically, the Planning Commission would not make a recommendation. It was brought to them as a courtesy, because the Commissioners dealt with the issues first hand during site plan reviews and tree removal permits. The question was whether the Planning Commission wanted to see it again based on the comments or if it should go right to Council. She guessed that they wanted to see it again. Ms. Morita said that she would like to see it again before it went to Council to make sure they were all on the same page. She would not want Council to have to go through the Minutes to make sure all the changes were made. She remarked that she did not mind looking at it three times. Mr. Elwert said that one more time was fine with them.

Chairperson Brnabic agreed that was a good idea. She asked if they had any further questions for the Commissioners. Mr. Elwert said that he appreciated the variety of input, which would improve the code. He was not exactly sure when it would come back, but they would bring it back.

Chairperson Brnabic called for a break from 8:57 p.m. to 9:08 p.m.

Discussed