

**CITY OF CONWAY  
TREE BOARD MEETING  
WEDNESDAY, May 24, 2023**

Present: Jacqueline Kurlowski, McKenzie Jordan, Autry Benton, Troy Roehm, Duc Watts, Gerry Wallace

Absent: Jamie McLain

Staff: Jessica Hucks, Planning Director; Marcus Cohen, IT; Marquiez Carter, Planning Intern; Wanda Lilly, Arborist; Anne Bessant, Planning Assistant

Other: Kathy Ropp, Kaitlyn Weimer

**I. CALL TO ORDER**

Chairman Wallace called the meeting to order at approximately 4:37 p.m.

**II. APPROVAL OF MINUTES**

Jordan made a motion to accept the minutes as written and seconded by Kurlowski to approve the April 26, 2023 minutes. The vote in favor was unanimous. The motion carried.

**III. TREE MITIGATION REQUESTS**

- A. *Previously Deferred – 1528 Fourth Ave (Dollar General)*: The applicant, G3 Engineering & Surveying, is appealing the amount assessed by the City Arborist for required tree mitigation (fee-in-lieu), for the property located at 1528 Fourth Ave (PIN 368-03-03-0010).

Hucks stated that the subject property is proposed to have a Dollar General constructed onsite. During civil plan review, the applicant submitted a landscape plan showing the existing trees onsite, including ones proposed for removal. The original intent was to plant the required number of trees that were required to satisfy mitigation, as reflected on the original approved landscape plan. A tree survey is also included in your packet, showing the protected trees that existed on this site.

After reviewing the plans and visiting the site, the arborist assessed the required tree mitigation for the property, for the protected trees to be removed that are within the proposed building footprint. Based on the total DBH to be removed (116 inches), a total of 29 trees, a minimum of 4-inch caliper (each) would need to be replanted, OR a mitigation fee of \$21,750.00 could be paid in lieu of planting the mitigated trees. The applicants originally intended to plant the required number of trees to satisfy mitigation requirements, but due to lot constraints, the applicant has opted to pay the fee in lieu. The applicant is seeking a reduction in the amount that has been assessed, based on the lot size limitations. A revised landscape plan was included in the packet as well and the trees for which mitigation is based were outlined in red.

The civil plans have been approved and in conjunction with the approval of the civil plans, protected tree removals were also approved. Mitigation must be satisfied prior to a Certificate of Occupancy being issued, in accordance with the ordinance.

Protected Trees approved for removal:

- 28” Live Oak
- 20” Pin Oak
- 14” Turkey Oak
- 14” Water Oak
- 22” Live Oak
- 18’ Live Oak

Total DBH proposed for removal: 116 inches.

The applicant has revised their landscaping plan to show that 19 trees meeting the minimum requirements for mitigation, will be installed on the site, and a remainder of 10 trees for which the fee in lieu would total \$7,500.00 (10 x \$750/ea.).

Staff recommends that the board thoroughly review the request.

Kaitlyn Weimer, agent for applicants was present and further explained the appeal.

The board, applicant and staff discussed the appeal in length.

Jordan made a motion for the applicant to plant the 19 trees and also pay the \$7,500 fee in lieu. Kurlowski seconded the motion and the motion carried unanimously.

#### IV. DISCUSSION

- A. Discussion of Ordinance #ZA2023-06-05 (C), to amend *Article 11 – Signage*, of the City of Conway Unified Development Ordinance (UDO), regarding Electronic Message Centers (EMC’s) and Light-Emitting Diodes (LED’s) with digital and/or animated display.

Hucks stated that the following information was contained within staff’s issue paper for City Council for the Budget Retreat in February of this year:

Chapter 4 of the City of Conway Code of Ordinances assigns the duties of the Conway Tree Board to be the responsibility of the appointed members of the Community Appearance Board (CAB).

The issue that faces the current Tree Board is that there is no clear direction as to the appeals process regarding their decisions. There are 3 appeals options listed in the Tree Preservation Ordinance:

- a) Denial of a protected tree removal permit from City Arborist. The applicant may appeal to the Tree Board. It must be filed within 10 working days of the denial of the permit.
- b) The arborist cannot grant a permit to remove a landmark tree. If the tree is determined to be a landmark tree, the applicant must request permission to remove from the Tree Board. IF the Tree Board denies the applicant a permit to remove a landmark tree, they may appeal their decision to City Council. It

must be filed within 10 working days of the denial of the permit.

- c) Appeal of the penalty assessed by the Tree Board. If the applicant wishes to appeal the penalty (or mitigation amount) that was assessed by the Tree Board, they may appeal to City Council. It must be filed within 10 days of the Board's decision (or assessment).

Staff has explored a couple of different options regarding the Tree Board and the appropriate Board for protected tree removal requests to be considered.

In our research, staff has concluded that because Conway is a "Tree City USA", there must be a designated "Tree Board" OR a "Tree Department", and even with a Tree Dept., it is the opinion of the City Arborist, as well as other Cities / Towns with certified arborists that a Tree Board would still be necessary. Additionally, staff researched several cities / towns that are also a Tree City USA, and of the ones we found – all had a Tree Protection Ordinance and either a Tree Board, or in some cases, a Tree Commission. As such, staff has reached the following conclusions and suggestions for the Tree Preservation Ordinance and the appeals authority to ensure that the City does not lose its Tree City USA status and continues to strengthen its efforts in tree preservation and protection:

1. Codify the Tree Preservation Ordinance into the UDO. Then the Tree Ordinance falls under the purview of the Planning & Development Dept.
2. Designate that the Community Appearance Board (CAB) will continue to act as the Tree Board; however, appeals of the decisions of the Tree Board would be directed to the Board of Zoning Appeals (BZA).
3. Amend the Tree Preservation Ordinance, including the Appeals Section (Sec. 3-4-15 – Appeals), items (b) and (c) that directs appeals of the Tree Board to Conway City Council, and amend to direct appeals of the Tree Board decision to Board of Zoning Appeals (BZA). This would ensure a proper appeal process, as the appellant would then appeal decisions of the BZA to circuit court instead of City Council.
4. Begin collecting an application fee (\$250) for Tree Board Appeals. Staff proposes to begin charging \$250 for Tree Appeal applications. Should applicants seek to overturn the decision of the Tree Board, and these requests go to BZA, the property will need to be posted, the appeal would need to be advertised, letters would need to be sent to adjacent property owners, and decisions from the BZA would need to be mailed certified to interested parties.

Staff recommends to remove the Tree Preservation Ordinance from the general code and codify into the UDO and amend the Tree Preservation Ordinance to direct appeals of the Tree Board to the authority of the BZA.

Additional discussion for Tree Board is as follows:

- The Tree Preservation Ordinance, currently found in the general code (Chapter 4) will be repealed.
- The Unified Development Ordinance will be amended to include a new Article, Article 16 – Tree Preservation; however, the exact article name is still under consideration.
- City Council was favorable to collecting a \$250 fee for Tree Board appeals.
- Some of the protected trees could possibly be removed from the protected tree species list, while others could be added.
- Review the attached Tree Preservation Ordinance, with some of the amendments proposed.

- This is not final. We will have more discussions and a workshop before the amendments are advertised for Planning Commission consideration.

The board and staff discussed in length.

**V. BOARD INPUT**

None

**VI. PUBLIC INPUT**

None

**VII. STAFF INPUT**

None

**VIII. ADJOURN**

There being no further business to come before the Board, a motion was made and seconded to adjourn the meeting at approx. 5:03 p.m. The vote in favor was unanimous and the motion carried.

Approved and signed this 14<sup>th</sup> day of February, 2024.

Gerry C. Wallace

Gerry Wallace, Chairperson