

CITY OF CONWAY
TREE BOARD MEETING
WEDNESDAY, AUGUST 10, 2022
City of Conway Planning & Building Dept. – 196 Laurel Street

Present: Jacqueline Kurlowski, Duc Watts, McKenzie Jordan, Autry Benton, Troy Roehm, Jamie McLain
Absent: Gerry Wallace
Staff: Jessica Hucks, Planner; Allison Hardin, Planning Director; Wanda Lilly, City Arborist
Other: Hillary Howard, James Vaught, Randall Johnson, Stan Parker, Kathy Ropp

I. CALL TO ORDER

Chairman Jordan called the meeting to order at approximately 4:26 p.m.

II. APPROVAL OF MINUTES

Watts made a motion to accept the minutes as written and seconded by Kurlowski to approve the July 27, 2022 minutes. The vote in favor was unanimous. The motion carried.

III. TREE MITIGATION REQUESTS

- A. 1869 Wood Stork Drive** – the applicant, Flagship Construction (Stan Parker, agent) requests review and final determination of the penalty for removing protected trees without a permit on property located at 1869 Wood Stork Drive (PIN 384-01-04-0032).

Hardin stated that in May 2022, Flagship Construction applied for a building permit for a single-family home at 1863 Wood Stork Dr, in the Wild Wing development. Permit drawings included a tree survey and noted that there were wetlands on the property. As part of the review, staff performed a site visit and noticed that the site had been cleared; neither had a tree removal permit been issued prior to this action. Staff emailed Greg Hall (who works for the applicant) on May 25, 2022 and asked them to reach out to the city's arborist regarding the protected trees on the site. This was not completed, so on July 6, 2022 staff issued a stop work order on the site until the issue could be resolved.

Staff determined that 13 protected trees (12 Oaks and one Maple) had been removed from the site without a tree removal permit. Section 3-4-8 of the General Codes lists protected trees, which includes Red maple (*Acer rubrum*) with a diameter at breast height (D.B.H.) of 8" or greater, and all Oak species (*Quercus*) with a (D.B.H.) of 14" or greater.

On July 20, 2022, staff sent a letter to the site contractor, Barry Woodward (B & L Enterprises), to inform him of the mitigation required per *Section 3-4-14*. Mr. Woodward forwarded the information to Mr. Parker, who requested an appeal to the tree board for a final determination of any penalty for trees removed without a permit (as stated in *Section 3-4-14*).

City code allows the Tree Board to use the violations discussed in *Section 3-4-14* to guide the penalties

assigned when trees are removed without permits. The penalties start with the measurement (in inches) of the tree removed; this figure is then multiplied by a penalty of two or three times the measurements, depending on the D.B.H. of the tree(s) removed.

Applicants may replant trees to mitigate the loss. Replacement trees are required at a minimum of 2" - 4" D.B.H., with any leftover inches rounded up to an additional tree. Applicants are allowed to replant the number of inches of trees, or pay the amount of each 2" - 4" tree needed to offset the violation equation, or a combination of the two options.

Current nursery values used for 4" live oak trees are \$750 each and for 2" crepe myrtles are \$150 each. Note: because this process started prior to updating the nursery value per tree, the following calculations are based on the 2021-2022 nursery values of \$450 per maple or oak.

The applicant has the option to replant the same number of inches required for mitigation on this and/or any property they own in the city (with a few exceptions). When mitigating trees after removal, city code requires that the minimum tree diameter be either 2" (for smaller trees, like the American holly or Crepe myrtle) or 4" (for hardwoods like Live Oaks and Sycamores). The mitigation minimum for Oaks and Maples is 4" per tree, so staff divides the total inches of mitigation by the minimum width of 4" per replacement tree to come up with the final number of trees needed to mitigate the 681" DBH of trees as required under *Section 3-4-14*.

If the applicant is unable to put 171 trees at 4" per tree on their property (either this one or others owned by the same owner), they may choose to pay \$450 per mitigation tree that can't be planted. Alternatively, they may pay \$450 per mitigation tree for all required mitigation and not replant any trees on their property/ies.

For the subject property, the maximum fee would be $171 \times \$450$, or \$76,950 in mitigation fees if no trees are replanted.

When assessing the overall tree mitigation for 1869 Wood Stork Dr, staff noted that five of the Oaks listed on the tree survey were located in or near the proposed footprint of the structure. Had the applicant approached staff prior to clearing the lot, these trees would have been approved for removal so that the house could be constructed on the site. Staff re-calculated the mitigation fees to give credit for those five Oak trees (15", 14", 14", 20", and 20") and removed the penalty multiplier as an alternative the original fee calculation. This resulted in 515" in remediation (instead of 681"), and 129 whole trees (instead of 171"). *See the attached workbook for a specific breakdown.*

Under the adjusted calculation, the fine would be $129 \times \$450$, or \$58,050 in mitigation fees if no trees are replanted.

As a final reminder: any combination of mitigation through planting and fees may be used to address the violation.

Staff recommended that the board thoroughly review the request.

Stan Parker, applicant was present and further explained the request.

The board and applicant discussed the request in length.

Benton stated that this is an interesting situation to make one homeowner pay this amount of money when a few years ago council waived fees to a developer completely and thinks this is a bigger issue that needs to be addressed by council.

Jordan had concerns about setting a precedent for contractors to undercut the mitigation fee. He said the fee needs to be at least what it would have been had they sought a permit to remove.

Benton stated that he does not believe that this was a malicious act.

Benton made a motion send this issue to council- motion failed for lack of a second.

McLain made a motion to impose a \$20,000 mitigation, then withdrew his motion.

McLain made a motion to deny a retroactive tree removal permit and impose mitigation fine of \$20,000. Watts seconded the motion and the motion carried with Jordan voting no.

- B. 900 Fifteenth Ave** – the applicant, Dr. James Vaught, requests review and final determination of the penalty for pruning protecting trees without a permit on his property located at 900 Fifteenth Ave (PIN 338-12-01-0034).

Hardin stated that on 7/12/22, staff witnessed tree removal and pruning in progress at 900 15th Avenue. Staff researched and found that no tree removal or pruning permits had been issued for the project, so a site visit was performed.

Staff determined that two tree-form Crepe myrtles (*Lagerstroemia indica*) had been pruned and removed from the site. Section 3-4-8 of the General Codes lists protected trees, which includes Crepe myrtles with a diameter at breast height (D.B.H.) of four inches (4") or greater. One of the two Crepe myrtles removed from the site measured 32" D.B.H., and the other measured 19" D.B.H.

On 7/18/22, staff sent a letter to the property owner (Dr. James Vaught) to inform him of the mitigation requires per *Section 3-4-14*. Dr. Vaught requested an appeal to the tree board for a final determination of any penalty for trees removed without a permit (as stated in *Section 3-4-14*).

City code allows the Tree Board to use the violations discussed in *Section 3-4-14* to guide the penalties assigned when trees are removed without permits. The penalties start with the measurement (in inches) of the tree removed; this figure is then multiplied by a penalty of two or three times the measurements, depending on the D.B.H. of the tree(s) removed.

Applicants may replant trees to mitigate the loss. Replacement trees are required at a minimum of 2" - 4" D.B.H., with any leftover inches rounded up to an additional tree. Applicants are allowed to replant the number of inches of trees, or pay the amount of each 2" - 4" tree needed to offset the violation equation, or a combination of the two options.

Current nursery values used for 4" live oak trees are \$750 each and for 2" crepe myrtles are \$150 each.

The applicant has the option to replant the same number of inches required for mitigation on this and/or any property they own in the city (with a few exceptions). When mitigating trees after removal, city code requires that the minimum tree diameter be either 2" (for smaller trees, like the American holly or Crepe myrtle) or 4"

(for hardwoods like Live Oaks and Sycamores). The mitigation minimum for Crepe myrtles is 2" per tree, so staff divides the total inches of mitigation by the minimum width of 2" to come up with the final number of trees needed to mitigate the 102" DBH of trees removed.

If the applicant is unable to put 51 trees at 2" per tree on their property (either this one or others owned by the same owner), they may choose to pay \$150 per mitigation tree that can't be planted. Alternatively, they may pay \$150 per mitigation tree for all required mitigation and not replant any trees on their property/ies. For the subject property, the maximum fee would be 51 x \$150, or \$7,650 in mitigation fees if no trees are replanted.

Staff recommends that the board thoroughly review the request.

James Vaught, applicant, was present and further explained the appeal.

The board and applicant discussed the appeal in length.

Benton stated that he does not believe that this was a malicious act. Benton made a motion to impose a fine of \$500. Motion failed for lack of a second.

Kurlowski made a motion to deny the retroactive tree removal permit and assess mitigation fine of \$5,000. Watts seconded the motion. The motion failed with Jordan, Benton, McLain and Roehm voting no.

Jordan question that they were penalizing this applicant but did not penalize the last. He noted that the board started at the mitigation price, lower it for a contractor, who should have known better and this is a homeowner and it's a Crepe Myrtle tree. He stated that Dr. Vaught is a business owner in Conway and suggested that the board should at least offer the same courtesy, if not more because of what Dr. Vaught has done for Conway. Also, to not penalize him over what they have done for someone who is not even from Conway.

Kurlowski made a motion to amend her motion to adjust the mitigation fine to \$3,825 and the motion was seconded by Watts.

Jordan commented that with this motion the board is making someone who has been a good steward in Conway pay the full amount and someone who is not from or just new to Conway get a 76 percent reduction.

McLain made a motion to deny the retroactive tree removal permit and assess mitigation fine of \$2,900. Kurlowski seconded the motion and the motion carried with Jordan and Watts voting no.

IV. DISCUSSION ITEMS

A. Discussion regarding the canopy grant progress.

Hardin gave an overview of the progress.

B. Discussion on the increase of average mitigation price for trees.

Hardin gave an overview to the board.

V. PUBLIC INPUT

None

VI. BOARD 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 6 p.m. The vote in favor was unanimous and the motion carried.

Approved and signed this 24th day of August, 2022.



McKenzie Jordan, Chairperson

