

AMELIA ISLAND TREE PRESERVATION WORKING GROUP
MARCH 19, 2021 – 1:00 P.M.
VIRTUAL MEETING VIA GOTOMEETING.COM

The Amelia Island Tree Protection Working Group Committee met virtually this 19th day of March 2021 at 1:00 p.m. via gotomeeting.com. Working group members present via Go To Meeting were Betsy Huben, Local Planning Agency (LPA) representative; Nick Gillette, P.E., Gillette and Associates, Engineers; Early McCall, I.S.A. Certified Arborist; and Thad Crowe, Planning Director. Absent were Arthur Herman, Amelia Tree Conservancy; and Kelly Gibson, Senior Planner, City of Fernandina Beach. Potential contributors present were Taco Pope, County Manager; Bruce Jasinsky, former LPA working group member; Margaret Kirkland, Amelia Tree Conservancy; Susan Gilbert, Senior Executive Legal Assistant; Doug Podiak, Public Works Director; Jordan Limburgh, representing Gensis-Halff; and, Jessica White, Code Enforcement. Also present were Michael S. Mullin, County Attorney; Holly Coyle, Assistant Planning Director; Naomi Blaff, Planner I; Laurie Goltry, Planning Administrative Specialist 1; and Heather Nazworth, recording secretary.

The group discussed the status of former and new working group members. Mr. Crowe confirmed that the Planning and Zoning Board appointed Ms. Huben as their Local Planning Agency (LPA) representative on the working group following Bruce Jasinsky's term ending. Susan Gilbert, Executive Assistant for the County Attorney, assumed that since the Board appointed Ms. Huben, she should have voting rights.

Mr. Crowe received a message from Mr. Herman that Ms. Kirkland would be his proxy vote since he was unable to attend. Further discussion ensued regarding the applicability of the proxy vote. Ms. Kirkland pointed out that she is not a voting member of this committee. Ms. Gilbert inquired whether Mr. Herman had filled out a proxy form to appoint Ms. Kirkland as his proxy as he would be required to tell staff in advance by e-mail or an actual proxy. Mr. Crowe received an email from Mr. Herman at 12:33 p.m. today advising that he will not be able to attend the meeting and that he gave his proxy to Margaret Kirkland. Ms. Gilbert stated that the County Attorney, Mr. Mullin, should be arriving shortly and he can make the final determination.

Mr. Crowe opened the floor for nominations for a Chairman of the Amelia Island Tree Protection Working Group. Mr. Gillette nominated Ms. Huben for Chairman and the nomination was seconded by Ms. Kirkland on behalf of Mr. Herman. Ms. Huben assumed the duties of Chairman and inquired if the three attending voting members constituted a quorum. Ms. Gilbert explained that the quorum of the committee could vote on this item. There being no additional nominations, Ms. Huben accepted the nomination as Chairman of the Amelia Island Tree Preservation Working Group. The vote was all in favor.

The Deputy Clerk requested clarification whether Mr. Herman was a voting member.

Ms. Huben called for a vote to approve the minutes from the November 13, 2021 meeting. Mr. McCall stated that he had questions regarding the minutes. Ms. Huben advised that if he had corrections, he could address them now. Mr. McCall questioned the "error rate of the percentage rate" on Page Three as it should be 1.15 percent, not 115 percent. He stated that the changes were never made in the draft although the former planner, Sue Ann Alleger, had stated that she would make them; therefore, he could not approve the minutes. Ms. Goltry suggested that she look through the files to make certain that she provided the committee with the correct minutes. It was Ms. Huben's understanding that the changes reflected in the last meeting did not make it to the draft document. Mr. McCall stated that Ms. Alleger was going to change the wording on the draft ordinance; for instance, a lot of specifications about the type of soil that would be used for fill. Mr. Crowe advised that these aforementioned changes have been made to the ordinance and his memorandum distributed earlier outlines all the changes made. Mr. Crowe suggested waiting until after the committee reviews his memorandum to approve the minutes. Ms. Huben suggested deferring approval of the minutes in order to ensure the committee has the correct set of minutes. The group was in agreement.

Ms. Huben suggested that Mr. Crowe begin review of his memorandum and the changes to date to the draft tree protection ordinance.

Mr. Crowe reviewed the following suggested changes he provided in the memorandum dated March 17, 2021 (See Attachment "A") made to the draft Tree Protection Ordinance as follows:

- Page 5: Section 37.02 (E)(2): *Specimen tree determination*, which was changed from the proposed 33 percent of the most recent Florida Champion Live Oak to 40 inches in diameter at breast height (dbh).
- Page 7: Section 37.02 (F) (b)(iv) – *Tree Removal, Trimming and Removal of Trees*. This verbiage will not appear in the draft Tree Protection Ordinance due to exempting of minor tree maintenance from tree preservation. He explained that the group felt that it was unenforceable. The group discussed further discussed the exemption that the tree trimming and pruning should be exempt in its entirety. Mr. Crowe explained that minor maintenance activities such as pruning is exempt and all work would be performed in compliance with best practices by the International Society of Arboriculture (ISA) and the burden being on the applicant. There was a subsection regarding "minor maintenance" which was eliminated from this current draft; staff will be required to review minor maintenance as it is no longer exempt which will be an extra burden on staff.

The County Attorney, Michael Mullin, arrived at 1:20 p.m. Ms. Huben updated Mr. Mullin as to what Mr. Crowe was reviewing in the draft ordinance. Mr. Mullin requested clarification as to which version of the draft ordinance was under review. Discussion ensued. Mr. Gillette interjected that the way paragraph (iv) was previously written; if someone wanted to exempt maintenance, the only way it could be exempted is if they had a licensed landscape architect or arborist to trim your trees. He understood that tree trimming and tree pruning would be removed in its entirety. Mr. Crowe stated that trimming would be exempt and no arborist would be required. The burden would be on the applicant to perform the work correctly according to ISA best practices. Mr. Crowe continued his review of the draft ordinance.

- Page 12: Section 37.02 (F)(8) – The change simplified the requirement to require native soil or imported soil that is similar would not have to be tested; however, the suggestion would be to stock pile native soil or use similar fill. Mr. McCall questioned "EPGMD" in the text which refers to Broward County Environmental and Growth Management Department. Mr. Crowe advised that this was slated for removal.
- Page 13: Section 37.02 (G)(3)(c)(i) – Correction of a typo "botanic" to "botanical".
- Page 17: Section 37.02 (K)(3) – Correction to the tree preservation credits to be shown in percentage formats. Mr. McCall pointed out that on Page Three, it still says 1.15 percent. Mr. Crowe stated that the "period" has been stricken through.
- Page 20: Section 37.02(N)(5)(b)(i) - New language that required certified arborist supervision of tree barricade placement was revised to just require barricade location on the DRC site plan.

Mr. Mullin questioned page 18: Section 37.02 (M)(1), language "*may recommend to the Board of County Commissioners of Nassau County an unincorporated Nassau County Tree Planting Program*". He stated there are certain flashpoints that get created which could impede the approval. One of the issues is with any tree program is that appears to come off the island. Ms. Huben suggested cleaning the language up to clarify that it is an Amelia Island Tree Protection Ordinance. Mr. Mullin agreed that adding the Unincorporated Nassau County Amelia Island Tree Planting Program would provide clarity. Mr. Crowe continued review of the draft language as following:

- Page 20, Section 37.02(N)(b)(i) – The new language that required certified arborist supervision of tree barricade placement was revised to only require barricade location of DRC site plan.

- Page 29: Section 37.02 (U) (11) - Updates language regarding penalties to add compliance with *Florida Statutes*.

Mr. McCall discussed age 4, Section 37.02(D)(iii) – *International Society of Arboriculture (ISA) Certified County Arborist*. He questioned if the County is hiring a County Arborist or will it be a designee. Mr. Crowe responded that it can be a contracted or staffed position.

Mr. McCall referenced page 5, Section 37.02(E)(2), *Specimen Trees*, Mr. McCall suggested the addition of the term *Healthy Quercus Virginiana* in parentheses and italicized. It can be referred to as Live Oak and any species name shall be italicized throughout the ordinance as there are numerous species of Live Oaks. He further discussed the other types of trees located on Amelia Island.

Mr. Gillette addressed Page 6, Section 37.02 (E)(2)(A), under *Protected Trees*, it states “*a healthy specimen tree as defined in this Article and Article 32 Land Development Code (LDC), shall not be removed*”-while Section 37.02(E)(2)(C) states that a tree can be removed. He explained that the language gives the landowner no option. Mr. Crowe suggested combining the language to provide clarification. Mr. Jasinsky expressed his concerns with language regarding specimen trees and the effect on property rights. Mr. Crowe referred to Page 6, Section 37.02 (E)(2)(e)(iii), which he felt was the key criterion for the landowner/applicant if no other alternative exists to preserve a specimen tree. Further discussion ensued regarding conflicting language in the draft.

Mr. Gillette discussed page 9, *New Residential Subdivisions*, he and stated that the language does not reference any credit for preservation of trees in commonly held open or upland buffers. He commented there should be credit for saving trees in commonly held areas. Mr. Jasinsky referenced Page 7(v) which states that “*financial implications on the developer, applicant and/or property owner shall not be a determining factor in the issuance of a waiver.*” Mr. Mullin advised that all of this verbiage will have to be changed because it is inconsistent and if they eliminate the financial aspect, they could be in violation of the Bert Harris Property Rights Protection Act. Further discussion followed regarding the placement of trees on a lot. Mr. McCall stated that the goal is to keep as many specimen trees as they can on the island.qw78 Mr. Jasinsky suggested having two standards for property owners; one for lots purchased before and one for after this ordinance is established. Mr. Gillette felt that this entire specimen tree issue is problematic and difficult to apply. Mr. Gillette suggested incentivizing people by reducing their setbacks or reduce the footprint of the house back into a setback line to save the tree. Mr. Mullin suggested Mr. Crowe and his staff to draft incentives versus penalties. Mr. Huben agreed that the idea of incentives deserves careful consideration; therefore, she suggested a motion to approve the changes as stated and bring back potential incentives language.

Mr. Gillette referred to Page 9, *New Residential Subdivisions*. In his opinion, it reads as if there is no credit for preserving trees in commonly held open space or upland buffers. He added that when he designs lots, they try to put parks in areas with trees and place homes in the areas with less trees in order to satisfy mitigation requirements in commonly owed areas. Mr. Crowe responded that buffer requirements are a separate issue and credit would not be given for required buffer trees. Ms. Huben suggested staff bring this issue back at a later date for language clarification. Mr. McCall referenced page 17 which refers to preservation credits. Mr. Gillette clarified that there should be an incentive for saving trees in common and open space areas. Mr. McCall noted that there was existing language regarding incentives on Page 17 (K)(3) Preservation Credits . Mr. Gillette explained that the way the Land Development Code is written, you are not receiving credits for saving trees in common space areas and open space. Discussion followed.

Mr. McCall discussed page 7, *Tree Removal Permits*, he inquired if the County is going to issue permits to which Mr. Crowe responded that there will be permits.

Mr. McCall referred to page 12, Section 37.02(F)(6), "The tree donator and receiving entity shall be jointly responsible for the tree survival." He asked Mr. Mullin if there can be a contractual agreement drafted. Mr. Mullin stated that the tree donator should not be responsible and the language needs to be changed. Next, Mr. McCall referenced Section 37.02(F)(8), the abbreviations "EPGMD" should be Nassau County Department of Planning. He further addressed that the soil should be similar to the soil at the site and include the term "spodic" which is a layer of soil.

Mr. McCall discussed page 18, Section 37.02 (M)(2), suggested rephrasing "Tree Planting Program" to "Amelia Island Tree Planting Program". The group came to a consensus that the Section should be renamed "Nassau County Amelia Island Tree Planting Program" to clarify that the program is not required off the island.

Mr. Mullin referenced page 8, Section 37.02 (F)(2), "The term *New Development*" if the intent for shed, pool, parking area, drainage facility would require a permit for a shed on the property. Mr. Crowe responded that the Building Department would process the permit for a shed. Further discussion ensued regarding placement of any structure.

Mr. McCall referenced page 21, Section 37.02(N)(5)(c), which refers to trenching and excavation. He stated that damage can be done by air spading also. He suggested having the trenching done by directional boring/tunneling.

Mr. Gillette discussed having an example similar to page 10, which shows there is a need for mitigation. He explained that the maps need to show how much surplus is available and how to calculate the protected areas.

Mr. Mullin discussed page 27, Section 37.02(U), *Specific Penalties for Violation of Tree Protection Measures*, and stated that the penalties intrudes-upon the Code Enforcement Board's authority; however, there could become an addition to their authority. This tells the Board what standard they should follow and-what mitigation plan has to be provided. He referenced the language "*one caliper inch for every inch of DBH removed*" advising that there should be a basis to put in Code Enforcement standards. He next discussed page 28, Section 37.02 (U)(2) and (3), commenting that it gets too convoluted. He further discussed (U)(6) "In the event that an insufficient trunk of the removed tree exists...then County arborist based upon any available information ... in the same natural community". He suggested it would be easier if the established committee provides a set of standards to the Code Enforcement Board for consideration and the procedures need to be refined.

Mr. Mullin referenced Page 29, Section 37.02, (U) (11), "*the damage of a healthy specimen tree which kills or will more likely than not cause the tree to die shall warrant the assessment of a penalty*" will need to be removed. The determination is based upon testimony of an arborist and is within the purview of the Code Enforcement Board.

Mr. Mullin discussed page 4, Section 37.02(D) (2) (b), *Ex-Officio Non-Voting Members*, he is unsure of the intent of these members. Mr. Jasinsky questioned (2) (a) (iv) regarding the two lay citizens, he stated there may issue finding members every three years to serve with this background. Mr. Mullin agreed that the issue would be what is a demonstrated education and/or professional background. He explained who would make that determination. He suggested changing the language. Further discussion ensued.

Ms. Huben referenced page 29, Section 37.02 (U) (11), regarding penalties and fines. She requested clarification whether this would apply to residential and commercial. Mr. Mullin responded that he will further review and referenced page 3, applicability "the terms and conditions of Section 37.02 of LDC shall apply to all lands in the unincorporated area of Amelia Island".

Mr. McCall questioned the makeup of the Nassau County Amelia Island Tree Commission as being all volunteer or if there is a stipend. Mr. Mullin responded that if the ordinance does not reference a stipend, there is not one received.

It was moved by Mr. Gillette and seconded by Mr. McCall to approve the changes as indicated in the Memorandum dated March 17, 2021 (See Attachment "A"). The vote unanimously carried.

The committee came to consensus to hold the next meeting on April 16, 2021 at 1:00 p.m.

Mr. Crowe advised the Jordan Limburgh from Gensis-Halff was present in the meeting today and he is under contract with the County.

Following further discussion. It was moved by Mr. McCall, seconded by Ms. Kirkland, and unanimously carried to approve the minutes from the November 13, 2020 meeting as presented.

There being no further business, the meeting adjourned at 3:00 p.m.



NASSAU COUNTY
DEPARTMENT OF PLANNING
AND ECONOMIC OPPORTUNITY
FLORIDA

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MEMORANDUM

DATE: 3/17/2021

TO: Amelia Island Tree Preservation Working Group

FROM: Thad Crowe, AICP
Planning Director

RE: Current Draft Native Canopy Tree Protection-Summary of Changes from Last Meeting

The following changes were made to the Tree Protection Ordinance by the Working Group at their November 11, 2020 meeting.

Page 5: 37.02.E.2. Specimen tree determination, which is currently 41" dbh, was changed from the proposed 33% of the most recent Florida Champion Live Oak dbh to 40".

Page 7: 37.02.F.1.b.iv. This paragraph exempted tree minor maintenance from tree preservation. Note – this will require Staff review of pruning and other tree maintenance for non-residential properties, except for trees close to utility lines or posing a danger to the public.

Page 12: 37.02.F.8. This change removed language from a new paragraph that required the use of fill that was tested to ensure that it was suitable for tree health. Replacement language simplified the requirement to require native soil or imported soil that is similar to the pH, texture, permeability, and other characteristics of the existing soil.

Page 13: 37.02.G.3.c.i. Corrected typo "botanic" to "botanical."

Page 17: 37.02.K.3. This corrected tree preservation credits to be shown in percentage formats.

Page 20: 37.02.N.5.b.i. New language that required certified arborist supervision of tree barricade placement was revised to just require barricade location on DRC site plan.

Page 29: 37.02.U.11. From the minutes:

"Section 37.02 (T) Page 25-26 – Penalties – Mr. Gillette pointed out that the City of Fernandina Beach has had an island tree ordinance for single family lots forever. This is the first time the County is going to have one that is applicable to single family lots that are existing. He referred to paragraph 11 under paragraph U where the penalty is \$15,000.00. Ms. Allegre explained that this references healthy specimen trees. Discussion followed. Mr. Mullin explained that they will have to change paragraph 11 as the \$15,000.00 is the Code Enforcement statute where it finds that the tree was irreversible or irreplaceable. Mr. Mullin will change that language to add compliance with Florida Statutes."

This is the referenced language:

11. The removal of a healthy specimen tree not meeting the criteria defined in Section E (2), the removal of a healthy specimen tree without a permit, or the damage of a healthy specimen tree which kills or will more likely than not cause the tree to die shall warrant the assessment of a penalty of up to \$15,000, as determined appropriate by the Code Enforcement Board, pursuant to Sections 37.02(T) and (U) of this Article, in addition to meeting the restoration requirements defined herein.

Staff will provide the revised language at or before Friday's meeting.