

AMELIA ISLAND TREE PRESERVATION WORKING GROUP
MAY 7, 2021 – 1:00 P.M.
COMMISSION CHAMBERS – JAMES S. PAGE GOVERNMENTAL CENTER
YULEE, FL

The Amelia Island Tree Protection Working Group Committee (AITPWGC) was held this 7th day of May 2021 at 1:00 p.m. at the Commission Chambers, James S. Page Governmental Complex, Yulee, Florida. Present were working group members Nick Gillette, P.E., Gillette and Associates, Engineers; Early McCall, I.S.A. Certified Arborist; Kelly Gibson, Senior Planner, the City of Fernandina Beach (arrived at 1:28 p.m.); Margaret Kirkland, Amelia Tree Conservancy (proxy vote for Arthur Herman, Amelia Tree Conservancy due to absence); and Chair Betsy Huben, Local Planning Agency (LPA) representative. Potential contributors were Bruce Jasinsky, former LPA working group member; Jordan Limburgh, representing Gensis-Halff; and Jessica White, Code Enforcement. Absent was Arthur Herman, Amelia Tree Conservancy. Also present were Michael S. Mullin, County Attorney; Amber Jordan, County Attorney Administrative Assistant; Thad Crowe, Planning Director; Holly Coyle, Assistant Planning Director; Naomi Blaff, Planner II; Laurie Goltry, Planning Administrative Specialist 1; and Melissa Lucey, recording secretary.

Chair Huben called the meeting to order at 12:59 p.m. and addressed the first item on the agenda to approve the minutes.

It was moved by Mr. Gillette, seconded by Ms. Kirkland, and unanimously carried to approve the minutes from the April 16, 2021 meeting as presented.

It was moved by Ms. Kirkland, seconded by Mr. Gillette, and unanimously carried to approve the minutes from the March 19, 2021 meeting as presented.

Mr. Crowe pointed out that on the agenda that the review on the County Attorney's revision also included the revisions made by the Amelia Island Tree Protection Working Group from the meeting held in February. He reviewed the comparison of the current and proposed ordinances.

- Applicability under the current ordinance had an exemption for Class I Development for Single Family Residential (SFR), duplex, and mobile home (MH); however, it will require that all properties be subject to the proposed ordinance the tree protection standards.
- The "Administration" will now include the Nassau County-Amelia Island Tree Commission (NCAITC) and planning staff.
- The protected tree minimum caliper measured in diameter at breast height (DBH) will be reduced from six inches to five inches.
- Specimen tree minimum and removal criteria will be added to the proposed ordinance.
- Exemption Classification No. 1 will include pruning, trimming, and minor maintenance with best practices in the proposed ordinance.
- Exemption Classification No. 2 will require a permit or certified arborist letter. Under the current and proposed ordinance, provide similar provisions along with emergency purposes removal.
- Tree preservation increased from 45 percent to 100 percent of the tree caliper inches outside the construction zone and included the limits of disturbance.
- Tree replacement and mitigation would require 25 percent of the construction zone and limits of disturbance tree caliper inches to be replaced under the proposed ordinance.
- Off-site mitigation (tree planting) would be allowed under the proposed ordinance when the site cannot accommodate through the Tree Fund/Fee-in-Lieu and Tree Bank Exchange.

- Fill stockpiling and native soil would have specific fill requirements under the proposed ordinance.
- Class 1 Development for existing SFR, duplex and MH will not be exempt and would be reviewed by planning staff.
- Classes II, III, and IV Developments under the current ordinance will go through the Site Plan (SP) review, under the proposed ordinance it would be applied to the Preliminary Binding Site Plan (PBSP), SP, Site Engineering Plan (SEP), Preliminary Development Plan (PDP) or Final Development Plan (FDP) review.
- Site tree inventory would remain to be required.
- Certified arborist would be required only for the removal of 4 or more trees under the proposed ordinance.
- Replacement tree minimum size in DBH would remain the same.
- Species diversity requirement would be added to the proposed ordinance “not more than 40 percent of genus or 20 percent of one species”.
- Fee-in-lieu/Tree Fund would be introduced in the proposed ordinance and provide that the fee would be determined by quotes from 3 retail nurseries.
- Tree fund utilization would be used for tree planting on public or private lands, funding tree-related studies and natural area assessments.
- Tree Fund Fee can only be used for up to 50 percent of the required replacement caliber (DBH).
- Tree preservation credits will be defined in the proposed ordinance of the percentage of credit based on the DBH, including if the trees shade public spaces.
- Tree bank exchange area (off-site planting) was allowed subject to Planning and Zoning Board review; however, this will be allowed for unified developments under the proposed ordinance.
- The NCAITC can adopt the County Tree Planting Program (optional).
- Tree protection zone (TPZ) would provide the requirement that the drip line radius would require a six-foot radius, posts-mesh or wood fence barricades would be necessary, no activity and storage allowed in the TPZ, and hand trenching and directional boring would be permitted in the proposed ordinance.
- Tree abuse is prohibited, including hat-racking, over-pruning, and must follow Arborist standards.
- Waivers section would be introduced into the proposed ordinance allowing staff and the NCAITC to address setback reductions, building height increases, and parking reductions.
- Appeals will continue to go through the Planning & Zoning Board, and violations will be addressed through the Code Enforcement Board.
- Violations will require a restoration plan and an inch-per-inch DBH caliber replacement ratio.

Chair Huben suggested changes to the proposed ordinance regarding “Administration,” whereby the committee may also prefer applicants for lay citizens with specific education or professional backgrounds. Mr. Mullin pointed out that there is already a specified landscape architect, but it would be problematic to determine those preferences when checking the applications. He explained that the standards would need to be clear for the Board when making those appointments. Mr. Jasinsky disclosed that the previous committee felt that it should not specify criteria for the two lay citizens to bring balance to the committee. After a brief discussion, Chair Huben agreed with striking that language as drafted in the proposed ordinance for the two lay citizens.

Mr. McCall referred to the standard for the specimen tree removal criteria. He advised that the term for the tree health being sufficiently compromised deemed “hazardous” should be changed to “high risk of failure.” He explained that the word hazardous would be considered a nebulous term that a Certified Arborist could not well define. Mr. Gillette addressed the standards for the species diversity requirement.

He inquired if it should specify a minimum number of trees for planning purposes compared to “40 percent of one genus or 20 percent of one species”.

Mr. Crowe reviewed the changes made to the draft Tree Protection Ordinance since the last meeting along with the County Attorney suggestions:

- Page 3, Section 37.02 (B)(3) – *Applicability*, recommend removing Section K, tree preservation credits; Section L, tree bank exchange; Section Q, waivers, as these sections pertain to the new Tree Protection Plans (TPP) moving forward.
- Page 4, Section 37.02 (D)(2)(A)(iv) – *Nassau County-Amelia Island Tree Commission* clarified that the County’s arborist could either be an employee or contractor.
- Page 4, Section 37.02 (D)(2)(A)(iv) – *Nassau County-Amelia Island Tree Commission* deleted the requirement that lay citizen NCAITC members must have technical backgrounds.
- Page 5, Section 37.02 (D)(3)(B)(iii) – *Administration*, added the language “simplified” to Robert’s Rules of Orders.

Mr. Crowe responded to questions posed by the committee members related to the affordability of tree protection due to financial hardship, waivers, and land conservation. Mr. Mullin advised that it would be difficult to define what constitutes a financial hardship. Mr. Crowe pointed out that Page 6, Section 37.02 (E)(2)(iii) – *Protected Trees*, provides language that the application of this ordinance will remove all economically viable use of the property under review. Ms. Kirkland expressed concern that the trees could not be saved for economic hardship due to the design of the building. Mr. Mullin advised that the utilization of the Bert J. Harris, Jr., Private Property Rights Protection Act removes economic viability to the use of the property; however, the NCAITC would have to consider that information when making a determination during a hearing. Ms. Kirkland inquired if the County should offer to purchase or trade for the property. Mr. Mullin advised that it would require the County to establish a funding mechanism to accomplish that and pointed out that the current cost of land on Amelia Island is exceptionally high. Mr. Crowe referenced Page 6, Section 37.02 (E)(2)(iv) – *Protected Trees*, and advised that it provides essential criteria that the applicant must demonstrate good faith effort for preserving trees with the site design on the lot. He continued his review of the draft ordinance.

- Page 5, Section 37.02 (E)(2) – *Protected Trees*, added “*Quercus Virginiana*” and “*Quercus geminata*” and referred to these trees as “Live Oaks” throughout the documents.

Mr. McCall pointed out that anytime a species name of trees is identified that it should either be underlined or placed into italics and does not require to be capitalized. Mr. Crowe continued his review of the draft ordinance.

- Page 5, Section 37.02 (E)(2)(b) – *Protected Trees*, removed prohibition of removal of healthy specimen trees.
- Page 6, Section 37.02 (E)(2)(d) – Page 5, Section 37.02 (E)(2) – *Protected Trees*, added “*Quercus Virginiana*” and “*Quercus geminata*” and referred to these trees as “Live Oaks” throughout the documents.

Mr. McCall pointed out that Page 6, Section 37.02 (E)(d)(iv) - *Protected Trees*, provides the language “boring under tree roots instead of trenching.” He advised that if the phrase “trenching” was listed elsewhere in the ordinance, and should be removed due to being destructive to the root system. Mr. Crowe concurred, advising that mechanical and hand trenching would be removed. He continued his review of the draft ordinance as follows:

- Page 7, Section 37.02 (F)(1)(a)(i) – *Tree Removal*, added pruning and trimming.
- Page 7, Section 37.02 (F)(1)(a)(iv) - *Tree Removal*, reinstated minor maintenance exemption from permit and replacement requirements.
- Page 7, Section 37.02 (F)(1)(b)(i) - *Tree Removal*, clarifies between nonresidential and residential protected trees.
- Page 8, Section 37.02 (F)(2) – *Protected Tree Removed as part of New Development*, recognizes that the specimen tree can be removed “except as in accordance with” criteria of the types of development.

An in-depth discussion ensued regarding the table on Page 8 related to protected tree removal requirements, and Mr. Mullin suggested including an illustration to further clarify the removal techniques for a public hearing. A lengthy discussion followed regarding exemptions, best management practices, encroachment, mitigation, and arborist approval for tree removal.

- Page 12, Section 37.02 (F)(6) – *Tree Removal*, revision requiring the tree-receiving party to be responsible for the survival of the tree.
- Page 12, Section 37.02 (F)(7) – *Tree Removal*, clarifying that low impact development principles can be required in some instances; the word “necessary” does not imply such a mandate.
- Pages 12 and 13, Section 37.02 (F)(8) – *Tree Removal*, requires stockpiling of soil are similar and native soils.
- Page 13, Section 37.02 (G)(1) – *Required Documents for Tree Removal related to New Development*, replaced the terminology “New Development not requiring Development Review Committee (DRC) Approval” to “Class 1 (DRC) Development”.
- Page 13, Section 37.02 (G)(1)(a) – *Required Documents for Tree Removal related to New Development* specifies that the Planning Department can approve Class I TPP.
- Page 13, Section 37.02 (G)(1)(3) – *Required Documents for Tree Removal related to New Development*, replaced the word “format” with the more appropriate term “application.”
- Page 14, Section 37.02 (G)(3)(b) – *Required Documents for Tree Removal related to New Development* clarifies that the Planning Department will determine that the arborist certification is required.
- Page 14, Section 37.02 (G)(3)(c)(xv) – *Required Documents for Tree Removal related to New Development*, eliminating the option of “any other information deemed necessary by the Director of Planning to adequately review the request.”

Mr. Gillette referenced Page 14 (c)(xiii) relating to the jurisdictional wetlands and related vegetative natural buffers and inquired if the application would require a tree inventory for the wetlands. Ms. Gibson stated that her interpretation is that the application would only specify where the wetlands or buffers are located on a survey when including the tree inventory. Ms. Huben suggested that the language should specify the location of the jurisdictional wetlands. Mr. Crowe acknowledged and continued his review of the draft ordinance as follows:

- Page 17, Section 37.02 (J)(4)(d) – *Nassau Tree Fund/Fee-in-Lieu*, eliminated the use of the phrase “match funds” for grant applications.
- Page 17, Section 37.02 (K)(1) – *Preservation Credits*, eliminated unneeded preamble language.
- Page 18, Section 37.02 (L) – *Tree Bank Exchange Area*, eliminated the duplicative language of developments under a unified program.
- Page 21, Section 37.02 (N)(5)(c) – *Protection of Tree During Development Activities*, eliminated air spading option as that can be harmful.

Mr. McCall inquired if the ordinance used the language of trenching by hand. Mr. Crowe referred to Page 23, acknowledging that hand trenching would be removed and remain to read directional boring. Mr. Jasinsky requested clarification on the tree protection barricade referencing “2x4 top rail or wire mesh, chain link or similar” on the illustration on Page 22. Mr. Crowe referred to Page 21, Section 37.02 (N)(5)(b) that dictates that “the tree protection barricade shall be at least three feet tall, the barrier shall consist of either a wood fence or 2x4 posts placed at a maximum of eight feet apart”. He clarified that it does require a 2x4 minimum top rail, but a mesh fence would be sufficient as long as the posts are in the ground. After a brief discussion, he continued his review of the draft ordinance

- Page 23, Section 37.02 (N)(5)(c) – *Protection of Tree during Development Activities*, eliminate hand trimming.
- Page 26, Section 37.02 (Q)(3)(c)(iii) – *Abused Trees*, eliminate the statement that “financial hardship is not a factor in determining that the development program cannot be realized.”

Mr. Mullin referenced Page 27, Section 37.02 (S) – *Administration and Enforcement*. He requested that the ordinance be listed in subsection 1 (ii) when referencing the standards for a Preliminary Binding Site Plan as defined in Section 5.07 of the Nassau County Land Development Code (LDC) and to include County Arborist under subsection 2. He recommended that there should be a specified timeframe for the restoration plan to take place in Section U – *Specific Penalties for Violation of Tree Protection Measures*.

Mr. Mullin addressed Page 28, Section 37.02 (U)(7) and suggested eliminating NCAITC in evaluating a proposed restoration plan. He noted that this evaluation should take place between the Code Enforcement Board and the arborist. The criteria to be considered would remain as listed a-f.

Mr. Mullin discussed Page 29, Section 37.02 (U)(10) that refers to “no further county permits, site plan approvals or the functional equivalent for the subject property or parcel should be issued or inspections provided until all” and recommending confirmation from the Building Official from a legal standpoint that this does not violate the Building Code. He advised that he would be working with Mr. Crowe to modify the last portion of the penalty section.

Mr. McCall recommended adding the language that an ISA Certified Arborist would be required to justify encroachment in the TPZ on Page 21. Ms. Gibson explained that the City’s ordinance could be interpreted that encroachment is allowed when there is a need to provide access. Mr. McCall stated there is a big difference in trenching for utilities compared to putting a driveway or sidewalk; therefore, he feels that justification for the TPZ should be listed on Page 21.

Mr. Crowe responded to a question posed by the committee and advised that the penalty and fine money collected would be collected into the Nassau County Tree Fund and used for tree planning or studies. Ms. Gibson pointed out that the penalty and fine money collection was defined on Page 17, Section 37.02 (J)(7) – *Nassau County Tree Fund/Fee-in-Lieu*. Mr. Crowe noted that on Page 16, Section 37.02 (J)(4) provided the expenditure of monies collected by the Nassau County Tree Fund.

Mr. Jasinsky requested clarification regarding listing the irrigation system as a requirement for the restoration plan on Page 27, Section 37.02 (U)(1). Ms. Kirkland stated that the irrigation system intends to ensure that the planted trees would be watered, even by hand. Mr. Mullin questioned whether a Certified Arborist could determine if a tree died due to lack of water; Mr. McCall indicated that the Code for Landscaping provides instructions on planting and watering a tree. Ms. Huben noted that this could be referenced in that particular section. Mr. McCall responded to a question posed by the committee and reported that a Certified Arborist could determine the cause of the death of a tree. Ms. Gibson advised that the one-year warranty requirement for tree replacement is addressed on Page 16, Section 37.05 (I)(5).

Mr. Mullin advised that based upon the committee's comments today, some minor changes to the proposed ordinance will be made. He recommended that the committee consider voting on the draft ordinance to include the approved changes. He explained that a copy of the proposed ordinance with the corrections would be provided to each committee member before the second meeting in June 2021 for the Planning and Zoning Board.

It was moved by Mr. Gillette and seconded by Mr. McCall to amend Article 37 LDC, Amelia Island Nassau County Tree Ordinance, with the draft date of May 13, 2021, including the revisions and modifications approved today for distribution to the Planning and Zoning Board. The vote unanimously carried.

There being no further business, the meeting adjourned at 2:40 p.m.