

## ENVIRONMENTAL COMMISSION

June 17, 2020

The Regular Meeting of the Environmental Commission of the Borough of Roosevelt was called to order by Chairperson Michael Ticktin on Wednesday, June 17, 2020 at 7:02 P.M. We are not at the Borough Hall; **this is a “Zoom” meeting.** Members adjusted their recording equipment. Ms. Mary Tulloss reminded the Members that they should state their full names slowly each time before they speak, so members will know who is speaking. The Roll was called by Chairperson Michael Ticktin.

### ROLL CALL:

Present; Ashburner, Felong, Hartley, Ticktin, Tulloss, Silverman - Alt 1

Absent: Dermody, Murray, Vacant - Alt 2

### ADEQUATE PUBLIC NOTICE OF MEETING STATEMENT:

To show that proper notice of this meeting has been given, **Chairperson Michael Ticktin** stated that the minutes indicate: “Adequate notice of this meeting has been given, in accordance with the Open Public Meetings Law, by notices published in the Times of Trenton and in the Asbury Park Press on January 24, 2020 and posted on the bulletin boards in the Borough Hall and at the Roosevelt Post Office. This meeting is being conducted by **“Zoom”**. Notice of this meeting was given on the Roosevelt Borough Website.”

### PUBLIC COMMENTS ON THE AGENDA: None

### APPROVAL OF THE AGENDA:

Motion to approve this Agenda was made by Ms. Mary Tulloss and Second was made by Ms. Kim Felong. This passed by unanimous vote.

### APPROVAL OF MINUTES:

Motion was made by Ms. Mary Tulloss and Second by Mr. Sam Ashburner that the minutes of **May 20** be approved with the following minor corrections: page 1, under Approval of the Agenda, line 2, change “meeting” to **“celebration”**. On page 2, under Forest Management, line 4, change “Tamara little triangle” to read Tamara Trail”. On page 3, under New Business, line 6, change **“rare** bird” to read **“interesting** bird”; line 8, change “Tim” Felong

to “**Kim**” Felong and “Diane Laurey” to Diane **Lowrie**. These corrections were **unanimously** accepted. Change page one, last sentence “unimously” to read “unanimously”. These minutes were accepted; Kim Felong and Ellen Silverman abstained.

### **CORRESPONDENCE:**

Chairman Ticktin reported correspondence from Sustainable Jersey stating that our paperwork for certification was filed and we have a year’s extension. We will discuss this later this evening.

### **REPORT OF PLANNING BOARD LIAISON :**

Mr. Tim Hartley reported the Planning Board had a meeting on June 3. They finalized the Variance Denial for a property on Pine Drive. He reported that the Borough Council wants to revisit the Tree Removable Ordinance that was tabled last year.

### **REPORT OF COUNCIL LIAISON:**

The Council Liaison was not at this meeting, so our Chair Ticktin reported that (1) the two things relevant to the Environmental Commission were the proposed Bamboo Ordinance and the proposed Tree Protection Ordinance, (2) that the proposed Bamboo Ordinance was tabled, but that some Council member had said that it would have a second reading before the end of the year, when it would expire, if no further action was taken and (3) that he had sent a copy of the proposed Tree Protection Ordinance to the EC members and we would discuss it further when he gave the Administrative Committere Report.

### **REPORTS OF COMMITTEES:**

Administrative - The proposed Tree Protective Ordinance was discussed and the EC voted to approve the points set forth in the following memo (prepared by EC Chairman following the discussion).

- 1, The EC is concerned that the Council is moving too quickly with this Ordinance, which can affect a lot of homeowners and should not be rushed through at a time when the Council cannot hold normal meetings.
2. A less burdensome Ordinance limited to requiring replacement of large trees, perhaps upon the recommendation of the EC for specified reasons, might be reasonable—and perhaps even enforceable.
3. If a homeowner, like the young George Washington of legend, had to deal with a cherry tree that he wanted to remove, this ordinance would require him to (1) apply for a permit variously called a “tree removal” or “tree protection” permit (though the terms clearly have opposite meanings), (2) apply to the Planning Board for a variance to cut down an ornamental, (3) pay the permit fee and the escrow fees for the Planning Board attorney and any tree expert the Borough might

see fit to engage, and (4) hope that the Planning Board will permit him to cut down the tree. Alternatively, he may, like young George, just choose to cut down the tree and, in so doing, take the risk that (1) anyone will know that he violated the ordinance and (2) anyone will care enough to make an issue of it. In the unlikely event that he is given a summons for violating the ordinance, he can just pay the \$1,250 fine, and possibly plant a new tree somewhere, and still wind up paying a good deal less than it would have cost him to comply.

4. The following is a list that would be used to determine whether a tree is a “specimen tree” or “significant specimen tree” in the proposed ordinance.

#### The thickest, tallest, and oldest trees in New Jersey

The thickest tree on private property in Roosevelt that any of us are aware of is an oak with a diameter of about four and a half feet at or near the border of #2 and #4 Eleanor Lane. The specimen red oak in the above list is about 15 feet wide. Since the proposed ordinance defines a “specimen tree” as having at least 60% of the diameter of a listed largest tree, it would have to be nine feet wide, or twice as wide as the existing tree, in order to qualify. We therefore believe that there is no tree in Roosevelt that would meet the definition of “specimen tree” or “significant specimen tree” in the proposed ordinance.

5. Specific technical concerns with the text of the proposed ordinance are as follows:

### **19.3 Definitions**

“Clear cutting”

Does “the total number of trees, six (6) inches in caliper *of any type of trees*, refer to the total number of trees or the total number of trees of a specific type? If the latter, does “type” mean the same genus or species? If the intended meaning is the number of all trees six inches in caliper or greater, what are the words “of any type of trees” intended to add to that meaning?

To what area does “within an area on a lot” refer? Who decides what the “area” is?

If you are not allowed to cut down more than 20% of the trees within an “area,” does defining the “area” so as to include four other trees allow you to cut down a big tree that people may regard as contributing to the character of a street?

“Emergency”

The definition is limited to “unforeseen” circumstances or occurrences. If a tree is leaning over a building in such a way that it could fall at any time, its falling would not be “unforeseen.”

“Tree”

“Tree” is defined to mean “any *living* deciduous or coniferous (evergreen) tree...” Though the ordinance includes reference to dead trees, a dead tree is, under this definition, not a “tree,” so the ordinance would make “dead tree” an oxymoron.

“Tree, ornamental”

“Tree, ornamental” is defined to include “any other small decorative tree with a normally anticipated mature height of six (6) feet or greater (*including but not limited to*: Birch, Japanese Maple, Cherry, Crabapple, and Magnolia).” How would a property owner know that a small tree of an unlisted species is included? A criminal statute must be specific as to what it prohibits.

#### **19-4 Prohibited Activity**

The activities described in this Chapter *and any substantially similar activity* are prohibited activities.” Once again, a criminal statute must be specific as to what it prohibits; “any substantially similar activity” is not specific.

In (b), the permit is referred to as a “tree removal permit.” Elsewhere in the ordinance, it is called a “tree protection permit.” Which is it? (“Removal” more accurately describes the purpose of the permit process.)

In (d), there is the same language as in the definition of “clear cutting,” and therefore the same lack of clarity as to what “or type” and “an area on a lot” are intended to mean.

Paragraph (f) might be expanded to include removing or damaging trees on public property other than streets, given that removal of trees in public parkland behind houses has been an issue.

#### **19-5 Permit Required**

In both (a) and (b), “nor” should be “or”.

The permit is either a “tree removal permit,” as per 19.4, or a “tree protection permit.” The former is more accurate.

#### **19-6 Permit Application Requirements**

Once again, the name of the permit must be consistent.

Subparagraph (a)2. refers to the “proposed limits of disturbance.” While this term is clearly applicable to new construction, it is unclear what it means in the case of a single tree being cut down. Why should a plan showing all the trees in the “footprint” be required in such a case?

Subparagraph (a)4. refers to “removal of *dead* or diseased trees or a horticulturally advantageous thinning *or* overgrown area.” However, the definition of “tree” in 19-3 only includes living trees. Should a homeowner have to hire a tree expert to certify that a dead tree is, in fact, dead? Also, “or” should be “of an”.

Subparagraph (a)5. establishes higher fees for applications involving lots where there is a contract for sale, an option or an agreement to buy or there has been a change of title within the prior calendar year. Though it may well be the case that the impetus for this ordinance came from trees being cut by recent purchasers of properties, permit fees are intended to cover the cost of inspection and administration, not to punish a perceived class of potential violators. This cost is the same regardless of whether the property is for sale or was recently sold or not. The disparity would clearly be open to challenge in court.

## **19-7 Review of Applications**

Section 19-4 requires a tree removal permit as a precondition to removing a tree with a diameter of six inches or more. However, 19-7 requires a permit application, and presumably a fee and payment of the cost to the Borough for an expert opinion, for removal of thinner trees as well, and even for the removal of dead trees, which are not even within the definition of “tree.”

Paragraph a:

(In subparagraph 2(d), does “with the approval of the Borough’s Tree Conservation Officer” apply to “removal of dead, dying or diseased trees” or only to “a horticulturally advantageous thinning of an existing overgrown area”? It is unclear what “which” refers to and would be better to end (d) at “...diseased trees” and have a new (e) for “a horticulturally advantageous thinning of an existing overgrown area with the approval of the Borough’s Tree Conservation Officer.”

In subparagraph 3(a), the commas should be removed. As written, the sentence says that “all tree removal activities” are (1) “not permitted” and (2) “prohibited,” which makes it redundant.

Paragraph b:

There is a list of ten issues that the Planning Board is directed to address as part of the application process. The Planning Board will presumably need its attorney and perhaps its own independent expert testimony. Who is going to pay the cost of this review?

## **19-8 Mitigation Requirements**

Exhibit A would allow one tree to be removed from a lot in the R-40 Residential District without any requirement for mitigation. Given that removal of a tree in the R-40 Residential District was the original impetus for this proposed ordinance, how does excluding that very act from mitigation requirements further the objective of the ordinance?

Exhibit A also allows not more than three trees to be removed in the R-Ag 400 Residential/Agricultural District and not more than two trees to be removed in the R-100 Residential Conservation District. The R-Ag 400 district has a minimum lot size more than 21 times the minimum lot size in the R-40 district, while the R-100 district has a minimum lot size five times the minimum lot size in the R-40 district. The mitigation requirements are not at all proportional and appear to be arbitrary. Furthermore, any attempt to enforce the ordinance in a case involving a farmer who removes trees for agricultural purposes may well violate the Right to Farm Act.

## **19-9 Protection of Existing Trees and Street Trees**

The ordinance would provide for approval of protective barrier by the construction official. Since the construction official work for DCA, and is not subject to any directives issued by the Borough, that reference should be changed to the Code Enforcement Official.

## **19-10 Emergency Action**

As noted with regard to the definition of “emergency”, something that is not unforeseen is outside the definition of “emergency.” For this section to be broadly applicable, the definition must be amended.

## **19-11 Persons Exempt**

As noted with regard to the definition of “emergency,” something that is not unforeseen is outside the definition of “emergency.” For this section to be broadly applicable, the definition must be amended.

**Forest Management** - Member Sam Ashburner reported that he was on the Trail, found things in the Brook, signs ripped up in the water. He has seen kids on the Trail. He repairs things he finds ripped up. Ellen Silverman found a large tree down. Chair Ticktin said it is difficult to take action when no one sees the culprits. He suggested that we put a note in our Borough Bulletin Board; Sam will work on this. We might find the culprits.

**Invasive Plant Species** - Mr. Steve Taylor has plants that would have been given away at the town 4<sup>th</sup> of July picnic; however the picnic is cancelled this year. It was suggested that he might have a sign mentioning the Environmental Commission, give them to local plant lovers for continued loving care, as they come to the Post Office for their mail.

**Stream Monitoring** - Ms. Mary Tulloss would like to get more local folks interested in Stream Monitoring. She was encouraged to place an article in our local Borough Bulletin.

**Sustainable Jersey** - Ms. Kim Felong, following up Chair Ticktin that we have recently received correspondence from Sustainable Jersey, said she has checked and we had not yet submitted our application. She said that we had a year's extension; however, they said if it was completed, it could be forwarded. She checked it all out, we had enough points, so it has been submitted and is currently under review. Ms. Mary Tulloss reported for Sustainable Jersey-Schools. The garden is now complete. The deer fence is up, and we are looking to see if anyone on the Environmental Commission is available to volunteer for a week during the summer helping to care for the School Garden, watering, weeding, harvesting if ready to take home. Please send her an e-mail and she will pass it along. Volunteer hours are needed as part of our Grant, Mary must keep track of our hours. Sam Ashburner and Ellen Silverman both volunteered.

**Old Business:** There was some discussion on use of tree wordings in paperwork: **Tree Protection Permits** (used a lot) and **Tree Removal Permits** (used only two times). It was felt to use the first one more. Ms. Ellen Silverman felt that the public is not getting a chance to comment and learn more about this tree situation, and that it is being pushed on them. This was felt to be an important point. Ms. Mary Tulloss was also concerned that this is happening at a time when people cannot participate readily. (She has some references from Steve Taylor on her screen.) She felt Tree Ordinances need the support of the community and should be prepared with multiple representations for those involved. These Permits seem prepared for a much larger community than Roosevelt. She can think of several recent tree incidences like the Cemetery – wonders if they looked at the boundaries, tops were cut out of trees by the Synagogue. Chair Ticktin had a similar case on his property, top cut and his tree died in a year. Ms. Tulloss felt there are many tree concerns in town. Chair Ticktin said that concerned residents should participate in the Council meetings.

**New Business:** None

**COMMENTS:** Mr. Tim Hartley shared that he had seen a Northern Leopard Frog in his yard.

**ADJOURNMENT:**

No further business, on motion by Ms Kim Felong and second by Mr. Sam Ashburner, this meeting was adjourned unanimously at 8:05 P.M.