



Staff Analysis

Review of Tree Ordinance

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December 8, 2016

CITY OF GAINESVILLE STAFF ANALYSIS

Legistar No: 150167

Title: Review of the Tree Ordinance

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Summary of Issue

This Staff Analysis outlines the process and recommendations resulting from a referral to the Community Development Committee in September, 2015, regarding the tree ordinance.

History/Background Information

The City's Land Development Code requires a tree removal permit to remove regulated trees, which permit may only be granted if certain criteria are met. Tree removal generally requires mitigation, by planting trees (on an inch for inch or as otherwise specified), or if there is not adequate space on site then a mitigation payment is required. Section 30-23 of the Code provides that a separate fund (Tree Mitigation Fund) must be maintained by the City and used for new tree plantings associated with public improvement projects or for the preservation of trees through the purchase of conservation lands, but shall not be used for tree maintenance or for the installation of new trees that are required for a development. Although the City Code could be amended to adjust the allowable uses of Tree Mitigation Funds, as a matter of law the funds still need to be used in a way that is reasonably related to offsetting the loss of tree canopy.

Article VIII, Environmental Management, Division 2, Subdivision 1, Landscape and Tree Management, Stormwater Management and Water/Wastewater Connection Policy of the Land Development Code, the "tree ordinance," ORDINANCE NO. 090878, was approved by the Gainesville City Commission on June 6, 2013.

The revision process began in 2003 with a referral from the City Commission to the Tree Advisory Board (TAB) to recommend changes to the Land Development Code to better protect Gainesville from Southern Pine Beetle epidemics.

In 2004, the City Commission asked that the TAB expand provisions for invasive exotic pest plant management. The City Commission requested the TAB strengthen the heritage tree protection following a law suit where a developer sued the city for denying a development plan that proposed the removal of a 40" Live Oak.

Twelve public meetings were held in 2008 and 2009 where the proposed changes to the tree ordinance were discussed.

The City Plan Board approved the proposed changes to the tree ordinance by a 4-0 vote, on February 25, 2010. The City Commission subsequently approved the petition on May 6, 2010 by a vote of 7-0.

City staff worked extensively to prepare a draft ordinance and released same for review and comment in March, 2011. Several public stakeholders expressed concern with and interest in revising the draft ordinance. As a result, on April 18, 2011, the Community Redevelopment Agency (CRA) directed CRA staff to hire a consultant to review the draft ordinance and coordinate a stakeholder review process. On March 19, 2012, a revised draft was presented to the CRA board by the CRA staff and consultant, Perkins + Will. Between May 2012 and May 2013, City staff and the TAB continued to meet with stakeholders and held public meetings. On May 30, 2012, City Planning staff provided the revised draft to the stakeholder group, and on June 4, 2012, the TAB reviewed and approved the draft with further revisions.

The City Commission approved the changes on first reading on May 16, 2013 and adopted the ordinance on second reading June 6, 2013.

During one of the citizen comment portions of the July 16, 2015, City Commission meeting, a citizen spoke regarding the city's tree ordinance. The matter was referred to the Community Development Committee for further discussion. Later staff were informed of concerns related to a development proposal for Holy Faith Church and were asked to include those concerns as well. At the September 3, 2015 City Commission meeting the issue of the tree ordinance and appeals process was also referred to the Community Development Committee.

The Community Development Committee met to discuss these items on October 14 and December 2, 2015 and determined that a dedicated meeting to discuss the issue should be scheduled. Stakeholder workshops with Perkins + Will were held on January 27, March 30, and July 26, 2016 to review and analyze the tree ordinance, and obtain community feedback.

During the first workshop, the tree ordinance was discussed and reviewed with community members whose input was collected and compiled by Perkins + Will.

At the second stakeholder meeting Dr. Michael Andreu (University of Florida) and Rob Northrop (University of Florida-IFAS) shared their experiences with the City of Tampa's tree inventory and urban forest management plan and discussed how the process led to a more thorough and comprehensive review of Tampa's tree ordinance. Perkins + Will also presented four main issues identified from stakeholder input at the first meeting:

- Possible expanded uses of mitigation funds
- Potential incentives for tree preservation
- Economic hardship of mitigation
- Equity of mitigation requirements

At the third public workshop, Perkins + Will suggested waiting until after the City of Gainesville's urban forest ecological assessment is completed before discussing the last three options on the list. Because these issues are complex and require a comprehensive review,

Perkins + Will suggested that current efforts should focus on ten additional uses of the tree mitigation fund that were identified in the stakeholder meeting:

- Urban forest ecological assessment
- Urban forest management plan
- Tree care educational programs
- Tree planting in medians of state and county roads and public works projects
- Contract growing of desired species
- Funding for soil measures that support tree growth
- Program coordinator for tree mitigation funds
- Eradication of invasive plants on Right of Way
- Allow for funds to be reinvested into landowners’ property/support green projects on the developer’s site (e.g., green roof)
- Tree maintenance for property owners who are unable to maintain the tree/tree canopy on their property

The City Commission referred the ten proposed additional uses of the tree mitigation fund to the TAB for their consideration and feedback.

The TAB met on August 22, 2016 and discussed the referral. With input from the City Attorney’s Office, the TAB separated the ten proposed additional uses of the tree mitigation fund into three categories. Group A are uses that can currently be done with the existing code language. Group B lists those uses that would need a code change to allow, and Group C are uses that tree mitigation funds should not be used for due to the lack of direct correspondence to the removal of trees.

Group A Can Do Now	Group B Can Do w/ Code Change	Group C Tree Mitigation Funds Should Not Be Used
<ul style="list-style-type: none"> • Tree planting in medians of state and county roads and public works projects • Contract growing of desired species • Soil measures that support tree growth • Program coordinator for tree mitigation funds 	<ul style="list-style-type: none"> • Urban forest ecological assessment • Urban forest management plan • Eradication of invasive plants on Right of Way 	<ul style="list-style-type: none"> • Tree care educational programs • Allow for funds to be reinvested into landowners’ property/support green projects on the developer’s site (e.g., green roof) • Tree maintenance for property owners who are unable to maintain the tree/tree canopy on their property

The TAB continued discussing the proposed changes at their September 12, 2016 meeting. The TAB voted not to take any action at this time on the proposed changes to the tree ordinance/tree mitigation fund until the urban forest ecological assessment (currently underway) is completed in March 2017. The rationale was that the ecological assessment will provide guidance to inform decisions on the protection and future management of the urban forest. The TAB supported the options in Group B, and suggested the use of incentives.

Staff comments on the ten proposed additional uses of the tree mitigation fund:

Group A

- **Tree planting in medians of state and county roads and public works projects**
Tree planting in medians of state and county roads and public works projects is currently possible under the existing ordinance. The city will continue to plant trees on county and state roads as projects are developed.
- **Contract growing of desired species**
Contract growing with local nurseries is currently possible under the existing ordinance however staff recommends waiting until the ecological assessment is complete before selecting species to be contractually grown.
- **Funding for soil measures that support tree growth**
Funding for soil measures that support tree growth is currently possible under the existing ordinance. The Community Redevelopment Agency's NW 1st Ave streetscape project has been funded with tree mitigation funds and will include structural soil and other soil measures that support tree growth. When necessary, these soil measures will be used on future projects.
- **Program coordinator for tree mitigation funds**
Currently the tree ordinance only allows tree mitigation funds to be spent on new tree plantings associated with public improvement projects or for the preservation of trees through the purchase of conservation lands. The City Arborist has been working with other city departments (Public Works, Community Redevelopment Agency, and Gainesville Reginal Utilities) to incorporate tree plantings into development projects utilizing tree mitigation funds. This has proven to be an effective means of planting additional trees beyond development requirements. PRCA has contracted with Chen Moore and Associates for design, permitting, bidding, and construction administration for multiple tree planting projects proposed by staff. Once these projects are complete, staff will evaluate to determine the necessity for additional staff such as a Program Coordinator, or continue contracting out these services. The city's Horticulturist is a position funded in part by the tree mitigation fund. The Horticulturist continues to initiate, plan, coordinate and implement new tree planting projects. Since the tree ordinance allows tree mitigation funds to be spent on the preservation of trees through the purchase of conservation lands, staff recommends hiring a contractual land acquisition agent utilizing tree mitigation funds to assist in the acquisition of conservation lands.

Group B

- **Urban forest ecological assessment**
The current urban forest ecological assessment is partially funded by the Florida Department of Agriculture and Consumer Services Urban and Community Forest Grant

and the Urban Forestry Section's general fund budget. To continue the monitoring of the ever changing urban forest, reassessing every five years is ideal. The Tree Advisory Board would like the city to provide funding for the ecological assessment from the general fund without the use of the tree mitigation fund. Staff suggests either allocating general funds or amending the code to allow use of the tree mitigation funds to fund the recurring ecological assessment every five years.

- **Urban forest management plan**

The urban forest management plan will be the next step following the ecological assessment. The City of Tampa has used an ecological assessment and an urban forestry management plan to help update their land development code so that requirements are tied to management plan criteria. Funding for the City of Gainesville's urban forest management plan is allocated in the list of recently funded Wild Spaces Public Places projects and may provide funding on a one-time basis. The urban forest ecological assessment and management plan should be updated on a recurring basis. Staff supports the recurring funding of the urban forest ecological assessment and management plan, either through the general fund or an amendment to the code allowing the use of the tree mitigation fund.

- **Eradication of invasive plants on Right of Way**

The city currently removes invasive trees on right of ways and staff recommends this be continued as part of city general maintenance practices funded from the general fund.

Group C

- **Tree care educational programs**

Staff concurs that public awareness and educational tree care is important to promoting a healthy urban forest, however, tree mitigation funds should not be used for this purpose due to the lack of direct correspondence to the removal of trees.

- **Allow for funds to be reinvested into landowners' property/support green projects on the developer's site (e.g., green roof)**

Green projects should be encouraged by the city, however tree mitigation funds should not be used for this purpose due to the lack of direct correspondence to the removal of trees. While green roofs are environmentally friendly they do not replace healthy high quality heritage trees and therefore staff does not support this proposed use.

- **Tree maintenance for property owners who are unable to maintain the tree/tree canopy on their property**

Staff concurs with the City Attorney that tree mitigation funds should not be used to remove or maintain trees on private property.

Addition Issue

One area City staff would like to include in any interim or longer term efforts to update the Tree Ordinance addresses ways in which property owners may seek to circumvent the City's Tree Ordinance through the agricultural classification of lands. Research is needed on this issue.

Fiscal Note

The Tree Mitigation Fund has a balance of \$2,460,847. \$781,067 of these funds have been committed to a variety of projects including NW 1st Avenue, NW/SW 6th Street, Rail Trail, Depot Avenue (segment 2), Miscellaneous Projects through a contractor, etc.

Options

A. Revisit tree ordinance revisions after the City of Gainesville's urban forest ecological assessment and urban forest management plan have been completed.

Timeline:

- The urban forest ecological assessment is scheduled to be completed in March, 2017.
- The urban forest management plan will take approximately one year to eighteen months to complete.
- Revisions to the tree ordinance could take an estimated one year to eighteen months to complete.

Pros: This is a holistic approach. The ecological assessment and urban forest management plan are tools that will be used to inform a comprehensive update of the Tree Ordinance utilizing science and stakeholder input. The urban forest ecological assessment is funded and currently underway. Funding for the City of Gainesville's urban forest management plan is allocated in the list of recently funded Wild Spaces Public Places projects.

Cons: This option means waiting another year to eighteen months until the urban forest ecological assessment and urban forest management plan are completed before initiating revisions to the tree ordinance meaning concerns raised about the impact of some of the current provisions of the Tree Ordinance would not be addressed for two to three years.

B. Make revisions to the tree ordinance now to allow the mitigation funds to be used to be available as needed to fund the urban forest ecological assessment and urban forest management plan.

Pros: Additional funding from the tree mitigation fund would be available to fund the urban forest ecological assessment and urban forest management plan if needed.

Cons: In this scenario there would likely need to be two rounds of code revisions instead of one. Revising the land development code (tree ordinance) is a lengthy process requiring significant staff time.

C. Continue stakeholder engagement process without information from the urban forest ecological assessment with the goal of making some interim changes to the tree ordinance based on concerns raised that led to the original referral by the City Commission in the areas of: 1) potential incentives for tree preservation, 2) economic hardship of mitigation, and 3) equity of mitigation requirements.

Pros: Some Tree Ordinance revisions could be made sooner addressing more pressing concerns without having to wait until the ecological assessment and urban forest management plan are completed. Some information from the ecological assessment is expected to be available before the City Commission would take action on interim changes to the Tree Ordinance.

Cons: The information from the ecological assessment and urban forest management plan will not be available to help inform, update and amend the tree ordinance. Based on the meetings held thus far, there doesn't appear to be general consensus of the stakeholders on interim changes. There would likely need to be two rounds of code revisions instead of one requiring significant staff time.

Tree Advisory Board Recommendation

The Tree Advisory Board recommends Option A. The status quo should be maintained for now until the ecological assessment and urban forest management plan are completed, then utilize the information obtained to revise the tree ordinance.

Staff Recommendation

The City Commission receive a presentation, discuss options and provide staff with guidance on how to proceed.