

**MAYOR'S BLUE RIBBON COMMITTEE
TREES AND PUBLIC GREENERY**

MINUTES

**7:30 AM – Wednesday, October 12, 2011
City Hall, 4th Floor, City Manager's Conference Room**

Members Present: Peter Loughlin, Chairman; Richard Adams, Vice Chairman; A. J. Dupere, Community Forester; Steve Parkinson, Public Works Director; Leslie Stevens

Members Excused: Everett Kern, Public Works General Foreman; June Rogers; John Bohenko, City Manager;

Also Present: Todd Croteau, Highway Foreman

The Chair called the meeting to order at 7:30 a.m.

1. **Acceptance of Minutes of September 14, 2011 Meeting** – Unanimously approved.

2. **Tree Removal Requests:**

Mountain Ash Tree in Point of Graves Cemetery – Attorney Loughlin stated it was in bad shape. Mr. Dupere felt it would do damage to the old graves if it is left. Mr. Parkinson made a motion to remove the tree. Mr. Adams seconded the motion. The motion passed unanimously.

3. **Update on Tree at Corner of South Street and New Castle Avenue**

Mr. Croteau stated they have a contractor coming to do an initial cutting that the Committee recommended and then they will make an evaluation.

4. **Update on Point of Graves Cemetery Project**

Mr. Parkinson stated he is not getting any response from Rotary so he will contact Joe Capobianco and they will probably just do it themselves.

5. **Mechanic Street Pumping Station Landscaping (Discussion with Karen Bouffard and Alan Gordon)**

Mr. Gordon requested that this be placed on the Agenda and he was present with Ms. Bouffard. Mr. Gordon stated that they are members of the committee formed last April to look at ways to beautify the pumping station on Mechanic and Gates Streets. They were inspired by the Deer Street pump station and the Marcy Street station which are welcoming and in character with the rest of the community. They are considering issues of odor and noise as well as beautification. The odor was addressed when new filters were put in at the station. They would like to meet

with the Tree Committee and also request a meeting with the City Council before the end of the year for expanded beautification.

Ms. Bouffard prepared a plan for landscaping to help buffer the ugly building. She knows the City is probably not willing to spend a lot of money so this is a 3-5 year plan to help soften things for the neighborhood.

Mr. Dupere asked how this impacts the mechanicals around the building. Mr. Gordon confirmed there was a row of five arborvitae that the neighborhood planted but they are so small they don't actually do anything. Ms. Bouffard is showing five new larger ones on the front to give immediate assistance and they would all be re-useable. Attorney Loughlin asked about underground piping. Mr. Parkinson indicated there is quite a bit to the left of the station that feeds down to the generator in the back but he would have to look at what is in the front.

Ms. Bouffard was making a request for six trees (one pear on the corner and five arborvitae). The 8' – 10' were in the \$150 – 165 range each to purchase but does not include the planting. She wasn't sure whether the City would plant them. Attorney Loughlin confirmed that the City goes to bid every spring. Mr. Parkinson added that they are installed by the contractor and they get a two year guarantee on them. Ms. Bouffard wondered if the trees could be planted this year.

Ms. Stevens asked about the likelihood of replanting them 5 years down the road. Mr. Dupere stated that arborvitae don't have an aggressive root system but they could dig them up with the proper machinery. Mr. Gordon asked if there was any unexpended money that they could use this year. Mr. Parkinson indicated he would have to speak to the City Manager to see what may be available.

Mr. Parkinson suggested that they refer this request to DPW with a report back. If they can move forward on it before the next meeting they will. He needs to check the area. Mr. Adams seconded the motion. The motion passed unanimously.

6. Request from City Engineer Peter Rice Regarding Next Sewer Separation Project Area

Peter Rice, City Water & Sewer Engineer was present with Dave Allen, Deputy Director of Public Works, Rick Dolce, City Project Manager, and Phil MacDonald from the City's consulting engineer firm. With the success of the Lincoln Street project, they are following up on their next project which goes from Lincoln and Richards to Middle, Highland, Merrimack and some of Rockland. Most trees are further back from the roadway and they are not planning any road line changes. There are private residences they may hear from when they start the project. They will have public meetings and advise residents that if they want trees removed they will have to appear before this Committee soon so they will be all set for when the project starts. Most impacts for this project will be trimming for the big excavators who will need a 15' – 16' clearance height. Mr. Rice asked the Committee members to go through the area to identify any issues or concerns they may have.

Mr. Rice stated the existing pavement widths will be maintained so the curb line will not be adjusted. Tree limbing will be required prior to construction. Most impact will be in the sidewalks as some trees are causing sidewalks to be curved. Today's intent is to bring this project to their attention. They are looking to bid in February and start in April. They have the Cass Street project the following year (2013).

Mr. Adams referred to the Lincoln Ave work 3 years ago and felt there was a delayed effect on the trees which is now starting to show up. It appears the younger trees, 10-20 years old, are most vulnerable and he wondered if they could incorporate funding to anticipate this effect. He felt they would see the same thing on Richards Avenue. Mr. Allen stated they could not fund under this project so they would have to adjust their tree budget. Mr. Parkinson felt this was a good point and there is a lag time before you see the total effect of a project, especially the trees. He felt there would be a way to increase their tree budget in anticipation of that. Everyone learns about trees by doing these projects and they are trying to put in place protocols and protections from the contractor for unnecessary damage to these trees. The biggest challenge on Richards Avenue is the canopy as the trees tend to be lower and will cause a problem with the equipment. They will need advice on how to trim the trees so that they will grow back.

Attorney Loughlin appreciated the Department's attempts to protect the trees. Mr. Parkinson thought they might use something to protect the lower portion of the tree. They need to put the contractor on notice that they are not going to tolerate indiscriminate damage and they need to understand that they are serious about it with substantial fines and penalties.

Mr. Parkinson felt it may end up that they would be doing their replanting on Lincoln Avenue next fall as they still have sidewalks going in next spring. They need to be careful about what the ideal time is to replant and not do it too soon.

Ms. Stevens asked if it was possible to walk the Richards Avenue area to identify what to do with each tree. Mr. Allen stated they will have a public meeting first to hear about issues from the residents before finishing up the final design and they would then have a site walk with the Committee.

Mr. Parkinson thought it would be a good idea to get a copy of the preliminary existing condition plans of the areas showing where the trees are located for the Committee's review and comment.

Ms. Stevens indicated that on the one hand they don't want to decimate all of trees but they have done a lot of back peddling and it seems to makes sense to take care of it knowing you will come back and plant afterwards. Mr. Dupere thought that the Lincoln Street plan was excellent and they requested that a lot of trees be removed and this Committee requested that they keep them but a lot of those trees suffered during construction so they ended up being removed. He felt this Committee needs to be more realistic. Richards Avenue is a narrow street and it will be a problem for the trees

Mr. Parkinson asked about the history of Richards Avenue as he believed the trees were all planted around the same time. He thought there were elms all along Richards and they all died. Attorney Loughlin believed that was the first project that Clotilde Straus, Sam Mattick and Charlie Vaughan did in 1968. Unlike Lincoln, there is fairly uniform widths and fairly wide areas for planting so he hopes that will work to their advantage.

Attorney Loughlin stated that they didn't have these discussions 20 years ago. They are a positive thing and a good process. Mr. Rice stated they will be back with more information.

7. **Discussion of Tree Ordinance**

City Attorney Bob Sullivan and Assistant City Attorney Suzanne Woodland were present.

Attorney Loughlin stated they have been working on a Tree Ordinance for 2-3 years. The Legal Department prepared a Tree Ordinance which made the Public Works Director the Tree Warden. Attorney Loughlin made some suggestions about the whole process and circulated a red-line copy at the last meeting.

Mr. Adams wanted to know if there was any way to incorporate language into the ordinance to have enforcement by the Committee in situations similar to the Ocean State Job Lots violation. Attorney Loughlin added paragraph 8.309C to address that. Mr. Parkinson asked if it was enforceable. He thought that the Courts ordered that Site Plan approval was only enforceable with the original owner and not subsequent owners. City Attorney Sullivan agreed. Attorney Woodland asked how trees are different than drainage structures. Attorney Sullivan felt they were the same except changing the drainage structure was further development of the site. The conditions of approval are not recorded. Attorney Loughlin wondered if that would make it enforceable. Attorney Sullivan did not feel it would cover trees.

Mr. Adams about the \$6,000 they requested from Ocean State Job Lots. Attorney Sullivan confirmed they received the funds. Mr. Adams asked how they were able to do that if the city doesn't have any power. Attorney Sullivan stated this was done outside of the Site Review Agreement. The trees were actually on City land rather than Ocean State Job Lot property. Rick Taintor made the decision to get the money and hold it for awhile as they may change the road configuration by adding a turn lane. Mr. Adams felt it would have been nice if Ocean State Job Lots came to this Committee. He asked how they arrived at the \$6,000 value as the cost of the tree is more than just the nursery, especially beautiful ones like that. Mr. Dupere confirmed there is a value calculator that ISA uses to evaluate trees that are in place. The State law allows up to 10 times the damage of the value of the wood in the tree. There is a right to harvest law in NH. He doesn't know if it involves developed site plans or trees in right-of-ways. The town of Exeter spent a lot of money fighting a similar situation. Site Review vs. private residential property are two different issues and they have danced on both sides of that on this Committee. Attorney Loughlin felt they will always have to deal with this because the public has easements on 95% of the streets in Portsmouth but no ownership to the center of the street.

Mr. Dupere would add language that the Tree Ordinance is appointed by this Committee and it is followed up through the State chain.

Ralph DiBernardo was present and spoke to the Ocean State Job Lot situation. He had a discussion with the Planning Department some time ago about this matter. He was concerned that if they can't make this provision work, they are admitting that trees in Site Plan approval are only enforceable with the original owner. He suggested that when large pieces of property change hands maybe a courtesy letter from this Committee to the new property owner, reminding them that landscaping was part of their original approval and changes should go through this committee would be helpful. Attorney Loughlin wondered if they could record the Site Review Agreements. Attorney Sullivan felt a simple notice to put the property owners on notice that would not be a huge administrative burden might be the best document to record.

Mr. DiBernardo felt that there is no one better to keep an eye on things than the public. Maybe a Portsmouth Herald story on this discussion, encouraging people to call DPW if they see anyone cutting trees that may belong to the City. The public keeps an eye on the world. He also felt there was a lack of communication between the Planning Department and this Committee and the value of the trees. Attorney Sullivan agreed and in retrospect there should have been a discussion.

Attorney Loughlin confirmed that the Committee will ask City Attorney Sullivan to review the final red-lined copy of the Tree Ordinance.

7. Lists of Tree Removal Requests 2006 – 2011

Attorney Loughlin confirmed that they had talked about this last meeting so he put this list together. At some point they should coordinate with Everett Kern to cross reference where they have planted new trees.

8. Report from A. J. Dupere Regarding Proposal for Pruning of Recent Plantings by Tree Stewards

Todd Croteau and Mr. Dupere went to see some trees around the City. They found quite a few smaller trees that would benefit from pruning. Mr. Dupere could organize a group to do that. Mr. Kern always has a planting list and they could start with that and work backwards. A young tree from a nursery needs follow up after being planted. The trees by the salt pile should have been pruned years ago as they are full of dead limbs. They could do the work on whatever day the City would be available to pick up the brush.

Attorney Loughlin asked if this would cause DPW any issues. Mr. Parkinson confirmed it would not as they are not taking work away from employees as they have plenty to do. They would love supervised help. It gets stuff done that they just don't have time to do. Mr. Dupere confirmed he will organize a group. The tree stewards are covered by a liability waiver with UNH and are covered as volunteers by their liability policy. They will look professional and will have some form of identification.

9. Old Business

None.

10. New Business

Ralph DiBernardo wanted to compliment the City on a few things. The raised curbs around the trees are really helping with protection in front of Breaking New Grounds. It has cut down on mis-use by dogs and dog owners. He asked if RiRa was required to put tree guards in when they received permission for outdoor seating. Mr. Parkinson confirmed that the city installed those. Mr. DiBernardo felt that maybe that is something the City can require businesses to take care of when they get outdoor seating. It would also limits kids from climbing trees and swinging from the branches. Mr. Parkinson stated the City also installed the guards in front of Popovers.

Attorney Loughlin felt that credit goes to Mr. Parkinson on both of these items. He stated that there were attempts to plant trees on lower Congress Street for years but when they used the raised granite it made all the difference. He would like to see them use their tree funds to put in more tree grates.

11. Next Meeting on Wednesday, November 9, 2011.

A motion to adjourn at 8:48 a.m. was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse
Administrative Assistant
Planning Department