

TREES AND PUBLIC GREENERY COMMITTEE
City of Portsmouth

MINUTES

7:30 AM – Wednesday, June 11, 2014

Portsmouth City Hall, 3rd Floor, City Manager's Conference Room

Members Present: Peter Loughlin, Chairman; Richard Adams, Vice Chairman; Peter Rice, Director of Public Works; Todd Croteau, Public Works General Foreman; A.J. Dupere, Community Forester Leslie Stevens; and Dennis Souto

Members Excused: n/a

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

1. Minutes of the May 14, 2014 Meeting – Mr. Adams made a motion to approve; Ms. Stevens seconded the motion. The motion to approve the May 14, 2014 minutes passed unanimously.

2. Tree Removal Requests

134 Lincoln Avenue & 140 Lincoln Avenue - The Norway maple tree is in tough shape. Mr. Adams felt that the tree in front of 140 Lincoln was on its' way out. Mr. Souto agreed. Ms. Stevens made a motion to remove the two trees. Mr. Souto seconded the motion. The motion passed unanimously.

135 Lincoln Avenue – This is another Norway that is not in bad shape. Mr. Croteau indicated it had the large leader in the top that was dead and, upon further inspection and looking at the back base, there is a large section of rot. Also, there are squirrel holes in the trunk and more rot. It leans quite a bit towards the street. He felt it would be prudent to remove the tree. Mr. Rice asked about power lines. Mr. Croteau confirmed there are phone lines but no power lines. Mr. Adams made a motion to remove. Mr. Souto seconded the motion. The motion passed unanimously.

423 Greenside Avenue – This is a large white pine. Mr. Souto felt the tree is healthy and it made no sense to take it down but the roots are affecting the foundation of the shed that has been there a long time. The property owner has also had some branches fall onto his roof. This would be a good example of a City Tree with impact on the land owner. He talked to the landowner yesterday. He doesn't know what they could do about the large roots undermining the shed. Some pruning has been done. Mr. Adams asked about the homeowner moving the shed. Mr. Dupere did not feel that would work as the shed is on a concrete foundation. The roots can raise that shed but he is not sure that is happening. He would need to get inside the shed. The roots appear to go right beside the foundation of the shed. Attorney Loughlin has been very ambivalent about the tree. Ms. Stevens thought they should have a policy about this type of tree. Otherwise, they could be taking down a lot of trees. She wants to understand if they are legally obligated to do so. Mr. Rice added it was not just the above ground issues. They also get a lot of claims for root penetration into old sewer lines. The City's policy is that it is the homeowner's responsibility from the property line to the house. He is not sure they are setting a precedent by saying any damage caused by a public tree should be mitigated. If a limb fell down on the house or shed, an insurance claim would be made against the City if it was a City tree.

Ms. Stevens also noted that if they took the tree down, the roots would remain but the roots would no longer grow so it wouldn't create any further damage. Mr. Croteau stated they would grind the stump. Mr. Dupere noted there is a white pine further down the street that was hit by lightening and needs to be posted and removed. That may compound the issue. There is quite a bit of rot in it.

Mr. Souto felt that Ms. Stevens was correct. This is an example of where they should have a policy for this type of tree issue. Attorney Loughlin indicated that the policy on Sheffield Avenue was that it was a healthy tree so the city was not going to remove it. He felt they were very vigilant about not removing healthy trees. Ms. Stevens also pointed out that they did not take the trees down on Colonial Drive but they did cut the roots back. Mr. Souto wondered if they could cut the roots back on this tree, although they seem awful big to him. Mr. Dupere stated they would have to determine whether that would help or not. A couple of roots might help but a whole section of roots would have an effect on the structure. Mr. Adams asked what the homeowner's specific complaint was. Mr. Croteau responded that his lawn mower is getting damaged and the buckling of the shed. Mr. Adams felt they needed to confirm the impact on the shed and he further stated that there is plenty of precedent on the Committee to not grant a request of this nature.

Mr. Croteau confirmed the roots are on private property and the tree is in the right of way. Attorney Loughlin cautioned being careful with how much of a financial commitment they make on the budget for roots on private property. He agreed it wouldn't hurt to look at it. He suggested postponing this and having Mr. Croteau and Mr. Dupere go out, look at it and report back next month. Mr. Rice suggested having Corin Hallowell look at the limbs too.

Ms. Stevens made a motion to postpone this matter to the next monthly meeting to allow Mr. Croteau and Mr. Dupere to inspect the site. The motion passed unanimously.

3. Tree Planting Request for Lower Cass Street

Pictures were sent out to the Committee. Several neighbors are very interested in this. They will add this to their next planting list. Rick Dolce indicated they ran out of funds. Attorney Loughlin will respond to the resident who made the request.

4. Request for Tree Planting by Former Executive Councilor Ruth L. Griffin

Former Executive Councilor Ruth Griffin was present at the meeting. Attorney Loughlin indicated this was a referral from the City Council. Attorney Loughlin provided materials regarding public rights on trees from his award winning NH Practice Series. He stated the ownership of trees in the strip between the sidewalk and the street is complicated and goes back to 1868. He read from the State Statutes to further complicate the issue. The Committee had a discussion on Sagamore Avenue about whether some of the trees were legally planted. Under the statute, the landowner has the right to plant in that strip. Except in new subdivisions, the landowner owns to the center of the street, subject to the public right of way. His feeling is that any landowner can plant in that strip. The Committee has an interest in suggesting types that may be appropriate due to wires, etc. Mr. Adams felt if they adhered strictly to that statute, they would be out of business. Attorney Loughlin responded that was why he says it is complicated. He is not talking about the removal. If the owner plants the trees, they belong to the public. If DPW plants the tree, it belongs to the City. Usually when there is a problem with a tree, the landowners will say they are City trees. Also, the law has changed on tree wardens this year which says that any tree owned by the City can be removed. Mr. Dupere stated that in a lot of towns without Portsmouth's history, the land left over after determining the width of the road is turned over to the

private land owner. Towns can make regulations regarding trees so this Committee can still make rules and laws that the City Council approves. Attorney Loughlin felt that the public has the right to maintain the trees if it does not interfere with public travel.

Mr. Croteau asked if the statute is saying that if an owner of a property plants a tree in front of their property, they have ownership of that tree? Attorney Loughlin indicated that it does not say. Mr. Rice felt it would have to be donated and accepted for the City to own it. Mr. Dupere added that the tree warden has the power to take trees but pay damages.

Mr. Adams noted that only one individual has chosen to plant trees in this manner so they don't need to concern themselves with a broad range policy. Mr. Rice indicated there was a case in Atlantic Heights with a sight problem on a corner. Attorney Loughlin thought the simple answer to Ms. Griffin's request is for her to simply plant the tree. When the City Manager called Attorney Loughlin, he told him that he was not sure the City had control over it and it was his suspicion that it happens quite a bit around the City.

Ms. Griffin stated that she has two pin oaks in the back driveway that the City planted and two linden trees up by the corner. They would like to plant an American Elm tree in front of her house. She could also only find one beautiful Sycamore Tree on Middle/State Street so that was a second choice. London plane trees have been working out very well for the City. She also added that there are no power lines.

Mr. Rice made a motion to accept the request. Ms. Stevens seconded the motion. The motion passed unanimously.

5. Update on Spring 2014 Tree Planting Program

Mr. Croteau advised the Committee that the installer should be in this week, starting on Friday, and for the most part everyone is happy. They have adjusted some of the plantings. He will reach out at the end with a few trees that will be left over. Mr. Adams noted that when they selected the initial planting sites, there was till snow on the ground. Mr. Croteau responded that most places are decent size. Attorney Loughlin agreed they are doing this really late. Stratham Circle Nursery is the supplier. Mr. Croteau confirmed that they have talked about installation standards and he will have staff checking on them. They also have water bags.

Ms. Stevens asked about Sara Collins on Mendum Avenue. Mr. Croteau confirmed that he spoke to her and she is all set. Stakes have been put out and they will be planting a Japanese Lilac.

Attorney Loughlin asked if they have any fall back places for left over trees? Mr. Adam noted that they haven't done anything on Coakley Road. Attorney Loughlin praised the City for the plantings on Park and Aldrich Roads and thought they were spectacular.

The Committee members discussed trees that are dead or failing downtown. Mr. Croteau will look at the warranties.

Mr. Rice indicated that the filterra trees on State Street all look good except one in front of the State Street Saloon. Mr. Dupere confirmed they have been pruning them. Mr. Rice stated this is the first urban application with filter boxes. Mr. Dupere thought it was the perfect to see how they would do and they appear to be doing really well.

6. Update on Route 1 By-Pass and Market Street Extension Plantings

Market Street – Mr. Rice stated they were planning to come to today’s meeting but they did not have any details so they will come next month.

Route 1 By-Pass – It was asked if there would be any plantings on the hill coming out to Lafayette Road next to Crossroads and Mr. Croteau indicated that was ledge but there is a raised bed with day lilies. They will also be planting forsythia and rainbow roses.

7. Old Business

Mr. Adams asked if they had established that the species of the tree on Rockland near the ball park was actually a red cedar tree. Mr. Dupere stated there are no red cedars in the area so he doesn’t know who told the resident it would grow to be 100’ tall. They will move it as soon as they find a home for it. Mr. Adams recommended Rockingham Avenue. It was felt that a call should be made to Ms. Nelson to update her and Mr. Rice indicated he would call her.

Mr. Dupere stated that the planting list and planting spots are going out. Their intern is back on staff to continue with the inventory and she can look for future planting sites and record the data. If they will give him some parameters to put into the program (power lines, etc.) she can develop the program.

Ms. Stevens felt they should continue to pass out literature to the homeowners on how to take care of new trees when they are planted in front of or near their house.

Mr. Rice indicated that there is a Chinese elm planted at his house. The leaves look like something got into it and he would like to have someone look at it and see what’s going on.

Ms. Stevens stated that the four honey locust trees in the new park at the end of the Memorial Bridge are all dead or dying. Mr. Croteau responded that locust trees have not been doing well the past couple of years. Mr. Rice indicated they should get on this and replace them as this is a City park. Mr. Adams suggested visiting the site after the meeting to make specie suggestions.

Mr. Adams indicated he would also make a recommendation for a replacement tree in front of Alie’s in Market Square. Other dead trees include 107 Richards, the middle of Morse Cemetery, 67 Crescent Way and 188 Lincoln Avenue.

8. New Business

n/a

9. Next Meeting – Wednesday, July 9, 2014

A motion to adjourn at 8:30 a.m. was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse
Administrative Assistant
Planning Department

