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October 29, 2012

The Hon. Timothy Lecklider, Mayor
The City of Dublin, Oho
5200 Emerald Parkway
Dublin, Ohio 43017

re: Tree Waiver Request 6200 Wilcox Road; Council Agenda October 22, 2012

Dear Mayor Lecklider:

On September 12, 2012 I sent a letter to Planning Director Steve Langworthy requesting a "Tree Waiver" for 6200 Wilcox Road pursuant to City Council's Tree Preservation Fee Waiver Guidelines adopted in 2001. The "Tree Waiver" process is not very structured and contains no timelines. The only process my research found is that it typically begins with a letter request to the planning director and ends with a hearing before City Council.

Today I learned from the law department that my request had in fact been heard at the City Council meeting on October 22, 2012 and was denied. Neither myself nor my clients were aware that the matter was set for hearing on that date. There is no question that notice was not given, nor was the staff report presented to City Council provided to me. I believe this lack of notice was an innocent mistake, probably occasioned by two offices, Council Clerk and Long Range Planning, being involved in the process.

Had we been aware of the hearing, my clients and I would have been present to speak in support of the request and to present pictures of the site as improved. I feel due process supports a requirement that this matter be brought back for a new or rehearing to allow a proper presentation in support to be made. Accordingly, this letter requests that the previous action be set aside due to lack of notice and the matter set for a new hearing. Due process notice need not be burdensome, and can be a simple as an email to me, which I will acknowledge.

In terms of timing, I am concerned that RC Chapter 2505/2506 (Administrative Appeals) is applicable and as a result there is a 30 day timeline for appeal which constrains my representation of the applicants. To avoid the necessity of filing a precautionary appeal with the appropriate Court I would request that City Council take expeditious action on this request.

The issue of the applicability of RC Chapter 2505/2506 raises the further question of the nature of City Council's actions on tree waiver requests. This is certainly not a typical action and easy to categorize, but, I think it is clear that this process is not a legislative process, but rather one that implements previously passed legislation by examining evidence and making determinations based on adopted policies (*ie.* regulations). In short, City Council is sitting in an administrative capacity. With that in mind, I would also suggest that testimony given before City Council regarding the application should be under oath as required by law for administrative hearings.

Very Truly Yours

Christopher T. Cline

CTC:pq
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cc: Stephen Smith, Esq.
Anne Clarke, Clerk of Council
Stephen Langworthy, Planning Director

MASTER MAINTENANCE

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City of Dublin

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Memo

To: Members of Dublin City Council

From: Marsha I. Grigsby, City Manager

Date: October 18, 2012

Initiated By: Steve Langworthy, Director of Land Use and Long Range Planning

Re: Tree Replacement Fee Waiver Request - Master Maintenance Inc., 6200 Wilcox Road

Summary

This is a request for a tree replacement fee waiver of $9,700 for Master Maintenance, Inc., located on the east side of Wilcox Road, approximately 100 feet south of Shier Rings Road. The applicant removed 103 inches of protected trees from the site, without permits from the City, that were thought to be damaged or diseased, based on the consultation of an arborist. The applicant has worked with the City to replace some of the required vegetation, but in order to meet the provisions of the tree preservation regulation is required to replace an additional 97 inches of trees. The Code requires that the applicant replace the trees, inch-for-inch, or provide a fee of $100 per inch.

History

The 0.36 acre site was rezoned on June 27, 2011 (Ordinance 34-11) to TF, Technology Flex District. Prior to the rezoning in 2011, the applicant pursued a rezoning and conditional use request to rezone the property from R-1, Restricted Suburban Residential District to RI, Restricted Industrial District. The rezoning was to legitimize an existing commercial cleaning operation being conducted from the site, and the conditional use request was to legitimize an office use in association with the business. The rezoning request was approved by City Council on July 1, 2009 and the conditional use request was approved by the Planning and Zoning Commission on September 17, 2009.

As part of this approval process, the applicant was required to make site improvements, including upgrades to the existing parking area and the construction of a fence around the parking area. A building permit was approved by the city in July 2010. The applicant has recently completed the improvements to the property. At the same time the improvements were being made, American Electric Power Company (AEP) was removing trees that the utility company deemed in conflict with the overhead power lines on the west side of the property. The applicant discussed the condition of the trees in question on the north side of the property and, according to the arborist from AEP, the trees were found to be in poor condition. The Spruce trees were removed at the applicant's request, based on agreements between AEP and the applicant. Since that time, additional landscaping has been added to the site, including 2 three-inch caliper replacement trees on the north property line, and trees and shrubs to both portions of the front property, as well as preserving the existing trees along the southern property line. Although the site is limited in area for additional plantings, the site still requires 97 inches of tree replacements. This is the basis for the applicant's request.

Analysis

The intent of the tree preservation regulations is to encourage good tree management practices and not to burden new development by adding excessive costs. City Council approved a fee waiver policy for trees in March 2001. The two waiver guidelines are:

- Does the site meet the development standards?
- Have measures been taken to reduce the impact of construction on existing trees?

The parking area meets the landscaping requirements of the Dublin Zoning Code. Steps were taken by the applicant to prevent tree loss in an extremely confined planting area that was approximately five feet in depth (measured from property line to the construction area of the parking lot). The trees were intended to be preserved within this five-foot wide area, but they were found to be in poor condition by an arborist and subsequently removed.

Recommendation

The proposal and the associated site improvements minimize the impacts to existing trees and Planning recommends approval of the tree replacement waiver request of $9,700.

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September 12, 2012

Steve Langworthy
Director, Land Use and Long Range Planning
5800 Shier Rings Road
Dublin, Ohio 43016

re: 6200 Wilcox Road, Master Maintenance LLC
Tree Waiver Request

Dear Steve:

This letter is a request for a City Council Waiver of the requirements of Dublin's tree replacement standards contained in Section 153.146, a process commonly referred to as a Councilmatic Tree Waiver, with respect to Spruce trees removed from 6200 Wilcox Road during the process of conversion of the site from residential to office use.

As this site transitioned from residential to office use, the landowners were required to prepare engineering and architectural drawings which illustrated existing conditions and the new conditions which would be present upon completion of the conversion work. No variances or exceptions were needed and Code was met in all respects regarding architecture, building code and site development standards.

The issue involves six mature Spruce trees, probably aged about 60+ years. These were located along the north boundary of the parking area, which was required to be paved during the conversion, in what was to be a 5' landscape area. The trees were all cut down, at the owner's request, while an AEP arborist contractor was removing other trees on the site that were in conflict with the overhead power line along Wilcox Road.

The owner thought the plans for the site required removal of the trees and took advantage of the opportunity to utilize a conveniently accessible contractor. In reality, the approved plans provided for retention of the Spruce trees, though cryptic notes to this effect ("Ex. Tree DND-Typ") on the *Details and Site Staking Plan*—not the *Site Landscaping Plan,* were not particularly obvious. A text note on the *Landscaping Plan* did refer to existing evergreen trees meeting the VUA screening requirement, but the reference was also not obvious. It's important to note that at the point in time when the work was done, a landscaping contractor had not yet been engaged, and the owner was interpreting the plans.

In fairness, it should be pointed out that the Spruce trees had lost all of their lower branches in the aging process, leaving only needle foliage in the top portions, and as a result were not visually attractive. The testimony at the Planning Commission for the Conditional Use (Office use in a Restricted Industrial zone) stated that the trees were at the end of their life cycle. Perhaps more to the point, due to disease or pest infestation, the trees also dripped sap heavily on automobiles parked below, and thus lacked suitability for use in a commercial parking lot. Perhaps for this reason, it does not appear that the Spruce trees are on the approved list for screening requirements in Vehicular Use Areas.

In directing the removal of the Spruce trees, the owner not only was unaware that the trees were to be retained under the approved plans but was also unaware of the requirements to obtain a Tree Removal Permit under Dublin Code §153.143. Most residents are probably similarly unaware of this requirement, as was the arborist contractor who did the work.

Since the Spruce trees were history, the City and the owner's landscape designer agreed to a plan modification that incorporated four 3" Acer Rubrum—Autumn Applause Red Maples along the north boundary of the parking lot. These trees are more appropriately spaced, meet code requirements for a VUA, and are also appropriate for the soil and development conditions at the site. Everyone seems to agree that the result is much better looking today and promises a better future visage.

The removed Spruce trees were estimated as being about 103 caliper inches in total, though it is unclear whether the westernmost of the trees was removed by AEP for cause. So, about 91inches is in play under the tree replacement requirements, or about $9,100, a tremendous penalty for a small Dublin business. On the other hand, a tree for tree replacement under City Council's February 26, 2001 Tree Preservation Fee Waiver Guidelines would result in no cash penalty. One or two new trees would still need to be planted on the site, probably ornamentals such as crab trees along the west boundary.

There has been no argument that the site is not better off as currently landscaped. The only issue is the technical adherence to the Tree Preservation Code that mandates retention of all protected trees, even if unsightly, overcrowded, and unsuitable for permitted development. In this case, an honest mistake was made which enabled a much better result than living with declining trees until they finally died.

We would thus respectfully request that City Council grant a tree waiver allowing the removed Spruce trees to be replaced on a tree for tree basis, with a waiver of the caliper-inch payment requirements, under the February 26, 2001 Tree Preservation Fee Waiver Guidelines.

Very Truly Yours

Christopher T. Cline

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