

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, CITY TREE BOARD MEETING**
2 **HELD JANUARY 5, 2015, 6:00 P.M., CITY HALL, 100 N. COUNTRY CLUB ROAD**

3
4 **TAPE 1, SIDE A**

5 I. Call to Order

6 The meeting was called to order at 6:50 p.m.

7 II. Roll Call/Determination of a Quorum

8 Chairman Danny Williamson
9 Vice Chairman Lynette Swinski
10 Member Robert Boardman
11 Member Robert Sebald
12 Member John Lackey
13 Member Michael Gaudio

14
15 Member James Buck was absent.

16
17 City staff present were Juan (John) A. Omana, Jr., Community Development
18 Director; Bryan Nipe, Parks and Recreation Director; Gary Schindler, City
19 Planner; Stephen Noto, Deputy City Planner; and Diana T. Adams,
20 Administrative Assistant.

21
22 Also present were Rachid Alaoui, Gino Dellacava, Miguel de Arcos and Brent
23 Lenzen, P.E.

24
25 III. Approval of Minutes - November 3, 2014

26
27 **MOTION:**

28
29 **Member Boardman moved to approve the Minutes of the November 3, 2014,**
30 **City Tree Board meeting, as presented. Member Lackey seconded the**
31 **motion, which carried unanimously 6-0.**

32
33 IV. Citizen Participation

34
35 Chairman Williamson read aloud the Citizen Participation statement (see
36 attached). He then opened the meeting to citizen participation to which there
37 was no response and subsequently closed that portion.

38
39 V. New Business

JANUARY 5, 2015-1
CITY TREE BOARD

1 A. 2014-TREE-05: Appeal of staff's determination of a violation of Section 157.23,
2 Pruning, and denial of an arbor permit for property located at 1130 Greenwood
3 Boulevard, Lake Mary, Florida 32746 (Public Hearing)
4

5 Gary Schindler, City Planner, presented Item A. and the related Memorandum
6 (Staff Report). The Location Map attached to the Memorandum (Staff Report) was
7 on the overhead projector. He said, what is before you tonight is an appeal of a
8 determination by staff that a violation of Chapter 157 has occurred, and specially
9 157.23, which relates to pruning. The events that led up to this are as follows: On
10 November 4, 2014, the City received an application for tree removal. I am the
11 person that does onsite inspections and issues the permits. I'm Gary Schindler,
12 City Planner, plus sometimes Dudley Do-Right tree cop. But, I go out and look at
13 all requests for tree removal. The permit came in for Candlewood Suites, which
14 has an address of 1130 Greenwood Boulevard. When I got there, I found that the
15 trees along the west border, the peripheral landscape buffer along the west side,
16 had been severely pruned.
17

18 Mr. Schindler stated, I asked the City's Certified Arborist, Mr. Bryan Nipe, who you
19 are aware is also the Parks and Recreation Director, to go out to the site and report
20 back his findings. His findings are attached as part of your Staff Report. Basically,
21 he said that the trees had been severely pruned and the pruning is what is
22 considered to be hat-racking. Now, if you can imagine the stand up hat racks.
23 You've got a pole and then a number of hooks. Well, this is what the oaks look like
24 (putting colored photographs attached to the Staff Report on the overhead
25 projector). In fact, some of them don't even have any limbs on them. They are
26 simply a trunk.
27

28 Mr. Schindler said, there were eight Laurel Oaks that had been severely pruned to
29 the point of being injurious. There were six Dahoon Holly trees had not been
30 trimmed as severely, but the tops have been cut out of all of them. In light of that,
31 staff wrote a Notice of Violation and sent it to the parent company, which is in North
32 Carolina, and then we also sent a copy to Candlewood Suites. It is part of the
33 Notice of Violation.
34

35 Mr. Schindler stated, we have two fines; one based on the number of trees, and
36 there was a \$100 per each tree that was pruned in an injurious manner, and then
37 there were fines based on the caliper of the tree. The six Dahoon Holly trees were
38 below the minimum width. They did not fall into the – the lowest category is 6 to 12
39 inches. They are below that, so there was no additional fine based on the width of
40 the holly trees. But, the Laurel Oaks – they were all planted at the same time.
41 They were all roughly the same size when they were planted, and so they all fall
42 into this category; 6 to 12 inches. So, the fine for the Laurel Oaks, based on the
43 caliper, is \$4,800. \$4,800 plus \$1,400 equals \$6,200.

1 Mr. Schindler said, on Friday, December 5, 2014, staff received an e-mail from Mr.
2 Rachid Alaoui, who is the General Manager of the subject property, appealing
3 staff's determination of the violations and the resultant fine. A copy of Mr. Alaoui's
4 e-mail is attached to your Staff Report and that is the reason that we are here
5 tonight, because of the appeal.
6

7 Mr. Schindler stated, staff has detailed six Findings of Fact. Let me just run through
8 these (reading aloud from page 2 of the Staff Report):
9

- 10 1. During the period of November 3 through 14, several City employees made on-
11 site visits to the subject property located at 1130 Greenwood Boulevard.
- 12 2. Staff observed 14 trees that had been pruned in a manner identified in Section
13 157.23 of the City's Code of Ordinances as "hat-racking", which is improper and
14 injurious. The 8 Laurel Oak trees and the 6 Dahoon Holly trees are located
15 along the west property line adjacent to Interstate Highway 4.
- 16 3. The work was done without an arbor permit from the City.
- 17 4. On November 14, 2014, the City issued a Notice of Violation for the improper
18 pruning of the 14 trees.
- 19 5. The fine for the 14 trees equals a total of \$6,200.
- 20 6. Mr. Alaoui appealed the Notice of Violation and this item was scheduled for an
21 arbor board meeting.
22

23 Mr. Schindler continued with his presentation by further reading aloud from the
24 Staff Report under Recommendation on page 3 of the Staff Report, as follows:
25

26 It is staff's recommendation that the arbor board take the following actions:
27

- 28 1. Determine that a violation of Section 157.23 (C) (2) has occurred at 1130
29 Greenwood Boulevard resulting in 14 trees being trimmed in an injurious manner
30 commonly referred to as "hat-racking".
- 31 2. Determine that, per Section 157.23(G), "hat-racking" a tree is prohibited by the
32 City's Code of Ordinances and results in a fine.
- 33 3. Based upon the fact that 14 trees were "hat-racked" and based upon the size of
34 the trees, the resultant fine equals \$6,200.
- 35 4. Deny the appeal from Mr. Alaoui.
- 36 5. Determine that, in addition to the fine of \$6,200, the existing trees shall be
37 removed and replaced with 8 canopy trees and 6 understory trees.

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1 6. Determine that the replacement trees shall be planted no later than March 31,
2 2015.

3 7. Determine that all replacement trees shall meet the City's minimum standards.
4

5 Mr. Schindler concluded his presentation by saying, at this point, I will be happy to
6 address any questions you may have.
7

8 Vice Chairman Swinski asked, is there any way to tell when the hat-racking of those
9 trees would have occurred?
10

11 Mr. Schindler answered, the hat-racking occurred shortly before the application to
12 remove the trees. The cuts were fresh. Mr. Nipe can probably address that better
13 than I can, but in my discussions with the contractor, he had done the work and it
14 was fairly close to the time he applied for the arbor permit to remove the 14 trees.
15

16 Member Boardman questioned, when you say the contractor, you're talking about
17 the person that actually hat-racked them?
18

19 Mr. Schindler responded, yes.
20

21 Member Boardman asked, and they didn't get the permit obviously?
22

23 Mr. Schindler replied, no. No permit was obtained. For all non-residential
24 properties, all non one and two-family residential properties, a permit is required for
25 trimming.
26

27 Vice Chairman Swinski questioned, so, that contractor that day acknowledged that
28 he was the one that hat-racked them?
29

30 Mr. Schindler answered, yes.
31

32 Member Boardman asked, do we not have any legal ramifications against him like
33 you have done in the past on other ones?
34

35 Mr. Schindler responded, we have sent both of them a notice and we feel that the
36 property owner, per se, needs to probably address the issue with his contractor.
37

38 Member Boardman questioned, in other words, he should squeeze the money out
39 of the contractor?
40

41 Mr. Schindler replied, that's a civil issue between them.
42

1 Chairman Williamson said, I'm looking here at 157.23, Pruning, the one I think we
2 all discussed a couple of years ago where we revised all these. It requires a
3 pruning permit.

4
5 Mr. Schindler stated, that's correct. For non...

6
7 Chairman Williamson interjected asking, it was not obtained?

8
9 Mr. Schindler answered, it was not obtained.

10
11 Member Lackey questioned, then why wouldn't we enforce that?

12
13 Mr. Schindler responded, we are enforcing it.

14
15 Chairman Williamson added, that is what we are doing now. What he is referring to
16 is there a fine for.....

17
18 Member Lackey said, correct.

19
20 Mr. Schindler replied, when someone comes in and removes a tree, there is a
21 provision that a citation can be issued to the contractor. Section 157.23 does not
22 talk about a citation. With the absence of being able to issue a citation, we have no
23 ability to go after the contractor. Functionally, we can only go after the property
24 owner. So, in the future, we may want to also address a citation for the contractor.
25 A citation is through the Courts. It's a minimum \$300 fine per tree and it's through
26 the courts, whereas the rest is through the arbor board. If there is a problem, then
27 we could take the person to the Code Enforcement Board. So, there is really no
28 functional provision to go after a contractor.

29
30 Chairman Williamson stated, I think the one thing that we did do on this when we
31 restructured these, is we have one and two-family dwelling units were exempt from
32 this section.

33
34 Mr. Schindler said, yes. They have always been exempt, but we made them liable.
35 We said we are not asking you to get permits, but you have to understand that if
36 your contractor -- or the owner goes in and trims it in an injurious manner, you are
37 responsible. You have privilege, and with privilege comes responsibility.

38
39 Member Boardman asked, you said you spoke with the contractor. Did the owner
40 of the property instruct the contractor to do this?

41
42 Mr. Schindler answered, you will need to ask the representative of the owner.
43

1 Member Lackey questioned, you had asked to replace the trees by March 31st; is
2 that correct?

3
4 Mr. Schindler responded, yes.

5
6 Member Lackey asked, is there an estimated cost on the replacement of all those
7 trees?

8
9 Mr. Schindler replied, it's not wise to replace trees during the hot part of the year.
10 It's either replace by March 31st or you wait till November or December because
11 April through October, the chances of living are less if you transplant then, and we
12 want to do everything we can to make sure that the replacement trees live. That's
13 the reason for the date certain.

14
15 Member Lackey questioned, but do you have an estimated cost?

16
17 Mr. Schindler answered, no. Because we are dealing with a fairly large company,
18 and when you deal in volume, you can get cost that we can't get. But, our minimum
19 standards are 15' tall for a canopy and 8' tall for an understory tree. When you buy
20 them one and two at a time, they are pricey.

21
22 Member Boardman asked, could you define pricy, like, for the City of Lake Mary? A
23 rough estimate?

24
25 Mr. Schindler responded, Bryan, what is the cost of a 15-foot canopy tree, 3.5"
26 minimum caliper?

27
28 Bryan Nipe, Parks and Recreation Director, replied, you probably won't be able to
29 find Laurel Oaks on the market and certainly not that large, but you can find Live
30 Oaks, 3.5" caliper, installed for \$200, \$225 a piece.

31
32 Vice Chairman Swinski questioned, you had mentioned there was a violation that
33 also occurred of not getting a pruning request because this is a business and not a
34 residence. So, is that addressed anywhere?

35
36 Mr. Schindler answered, that is part of the fines. There is really nothing that
37 addresses a fine for not getting a permit. The fine is for the improper trimming. As
38 we go on, we are going to be looking at these sections and tweaking them to see
39 where we need to make revisions and improvements.

40
41 Chairman Williamson requested the Applicant come forward and address the
42 Board.

43
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1 Rachid Alaoui, General Manager of Candlewood Suites Lake Mary, 1130
2 Greenwood Boulevard, Lake Mary, Florida 32746, came forward in favor of
3 granting the appeal. He stated, Mr. Schindler has been kind enough to work with
4 us in relation to the crisis that we have experienced back in September. Actually,
5 the job took effect back on September 30th, and when we saw the crisis, we were
6 stunned. We reached out to the contractor and asked him if we could see a copy of
7 the permit before they started to do the job. He failed to do it, and I think that's
8 when he went back and asked the City of Lake Mary to provide the permit so he
9 could move forward with the other job that we were asking him to do.

10
11 Mr. Alaoui said, we are not in disagreement with the City of Lake Mary as far as the
12 fine, but I think that the contractor should be held responsible for the job that he has
13 done. Again, the fine – it's a hefty fine. It's \$6,200, plus replacement of those trees
14 will cost us around \$8,500, which is a total of \$17,000. It will bring a lot of revenue
15 to the City of Lake Mary in the State of Florida. I think \$17,000 is – I mean, we
16 don't have it just in the bank just to start paying fines like this. So, we're asking the
17 City of Lake Mary to just be a little bit lenient as far as the fine is concerned and
18 bear with us for a little bit so we can go ahead and pay it.

19
20 Mr. Alaoui stated, as far as the contractor is concerned, we have e-mailed him
21 several times. We have contacted him via telephone. He is not responding. We
22 have filed a complaint with the Better Business Bureau to see if they can do
23 anything. We are still waiting for their response, but as of now, our hands are tied
24 and we're asking just for mercy from you guys.

25
26 Chairman Williamson asked, was this person you hired, was he licensed?

27
28 Mr. Alaoui responded, he is licensed. He has been in business since 1995.
29 Actually, we do research as far as companies that we have hired to do any kind of
30 work at our property. I mean, from the reviews that he has on the website, it seems
31 he is a very good contractor, but he turned out to be not so good.

32
33 Chairman Williamson questioned, you would assume someone that has been in
34 business for 20 years would certainly know the laws of the city that he's working in;
35 right?

36
37 Mr. Alaoui replied, that's what you would think.

38
39 Member Boardman asked, walk me through the 8500 number because I'm hearing
40 \$250 a tree and then I'm hearing \$8,500. Walk me through how you get to that
41 number.

1 Mr. Alaoui answered, right after we received the letter from Mr. Schindler, we had
2 asked for bids as far as replacing and removing the trees. To replace each tree, it's
3 \$700, including the removal of the existing one. So, we have about two or three
4 bids that I can share with Mr. Schindler who seek the \$8,500. I mean, if the
5 replacement is 200, we would be more than happy to take that bid and replace
6 them as of tomorrow, but we did not receive anything below \$700-\$800 per tree.
7

8 Member Boardman questioned, I do believe when Bryan referenced it -- I guess
9 you were talking about the tree and not the removal? Just the tree?
10

11 Mr. Nipe responded, right. You are just talking the tree purchase.
12

13 Member Boardman asked, the removal is an additional \$500 or so based on what
14 you are saying?
15

16 Mr. Alaoui replied, right.
17

18 Member Boardman questioned, is it possible that if we decide to be a little bit more
19 lenient that we could spread the fine time out over a longer period so that they
20 would have a longer time to pay for it instead of saying it has to be paid right now?
21

22 Mr. Schindler answered, you are an advisory board. You are a board that is here to
23 take action. It is possible that you could do that; yes.
24

25 Chairman Williamson asked, I would assume that if we rule in favor of staff, that
26 you will probably be going after your tree contractor?
27

28 Mr. Alaoui responded, we have tried. I mean, we have checked with our legal
29 counsel. I mean, it is going to cost us a lot of money just to take him to court and
30 collect money from him, and I don't think that's the route that we want to take. We
31 just want to put this behind us and move forward. Again, we will file a legal
32 complaint with the Better Business Bureau. That way, they are not going to do this
33 to another business in Lake Mary. I mean, we don't want this.
34

35 Chairman Williamson questioned, does that fall under the Small Claims criteria?
36

37 Mr. Alaoui replied, from what I checked, anything below \$5,000 is Small Claims, but
38 it will take us forever to collect from the contractor.
39

40 Member Sebald asked, have you considered submitting this to your insurance
41 company?
42

43 Mr. Alaoui answered, our deductible is pretty high. It's \$100,000.

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1 Member Sebald said, okay. The answer is no.

2
3 Chairman Williamson explained to Mr. Alaoui the appeal process; that he has the
4 right to appeal the Board's decision, in writing, to the City Commission within 30
5 days from the date of this decision.
6

7 Mr. Schindler stated, if Mr. Alaoui would like to propose a repayment schedule, we
8 would be very happy to entertain it. Now, understand that Community
9 Development would not have the ability to approve it. It would be something that
10 we would have to go to the City Manager with and get her input as to whether or
11 not she would accept it. What I can tell you is that we have had other situations
12 whereby payment schedules have been approved. What has been done is they
13 have been made a part of the water bill, and they do that because if we get
14 nonpayment of a water bill, we immediately turn that over to a collection agency.
15 So, if Mr. Alaoui would like to do that, propose a repayment schedule, we would be
16 happy to consider it and go to the City Manager with it, but we would like to make
17 sure that he understands that it needs to be done in a timely manner so that he
18 does not lose his ability to appeal, if he so desires.

19 Mr. Alaoui said, I think we will take that route. I mean, the payment plan would be
20 great. I mean, as far as the finances, it's \$6,200 and if we can spread that out
21 throughout 12 months, I mean, that would be – and I can come up with a payment
22 plan. I can e-mail it to Mr. Schindler, and then if he approves it, then we will move
23 forward with the first payment.

24 Member Lackey questioned, Bryan, these trees are gone; right? No chance of
25 recovery?

26 Member Boardman stated, they have no leaves on them. He asked, how could
27 they live?

28 Mr. Nipe responded, they could certainly come back, but, structurally, when you
29 hat-rack a tree, when you top a tree like that, the stuff that does come back is
30 notoriously weaker and you have also lost the aesthetics along I-4. A lot of different
31 things going on here. But, no, it would never be the same tree if it did live.

32 Member Lackey questioned, so we know for sure that the trees have to be removed
33 and then replanted? That part of it we do know has to happen?

34 Mr. Nipe replied, my recommendation would be that a tree like that would have to
35 be removed; yes.

36 Mr. Omana added, I have also viewed them along I-4 and it is rather unsightly.

37 Mr. Schindler further added, and there is the requirement that the properties meet
38 the requirements of the Site Plan which was originally approved.

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CITY TREE BOARD**

1 Chairman Williamson opened the hearing to public comment. Hearing none, he
2 closed that portion and entertained board discussion and/or a motion.

3 **MOTION:**

4
5 **Member Sebald moved to deny the appeal, 2014-TREE-05, of staff's**
6 **determination of a violation of Section 157.23, Pruning, and denial of an arbor**
7 **permit for property located at 1130 Greenwood Boulevard, Lake Mary, Florida**
8 **32746, consistent with staff's Recommendation listed in the Memorandum**
9 **(Staff Report). The City may entertain a repayment schedule (to be**
10 **reviewed by City Manager); however, staff would like to make sure this is**
11 **done in a timely manner so that the ability to appeal, if so desired, is not**
12 **lost. Also, the date of March 31, 2015, may be negotiated as far as planting**
13 **the replacement trees. Member Boardman seconded the motion.**

14
15 **Chairman Williamson requested a roll-call vote on the motion, which was**
16 **taken as follows:**

17
18 **Vice Chairman Swinski - Yes**
19 **Member Lackey - Yes**
20 **Member Sebald - Yes**
21 **Member Gaudio - Yes**
22 **Member Boardman - Yes**
23 **Chairman Williamson - Yes**

24
25 **The motion carried unanimously 6-0.**

26
27 B. 2014-SP-08: Request to remove two historic Live Oak trees on property located
28 at the southeast corner of Business Center Drive and Heathrow Park Lane
29 (Central Parc Heathrow, Phase 3), Lake Mary, Florida 32746 (Public Hearing)

30
31 Gary Schindler, City Planner, presented Item B. and the related Memorandum
32 (Staff Report). He said, this is a request to remove two historic Live Oak trees that
33 are 24" or larger in a development area within what is now called Colonial Center
34 Heathrow. Originally, it was called HIBC, Heathrow International Business Center.
35 Chapter 157 says that any tree that is 24" or larger can only be removed by
36 approval from the arbor board. We have two trees; one is 24" wide and one is 26"
37 wide. Let me show you where those are (puts colored aerial attached to the Staff
38 Report on the overhead projector). You can see that the apartments are here, and
39 we have more apartments over in this area (indicating to overhead projector). So,
40 here is International Parkway and this is Heathrow Park Lane (indicating to
41 overhead projector). This is Business Center Drive (indicating to overhead
42 projector). Well, we have two trees. This one is 24" wide right here (indicating to
43 overhead projector). It's not actually in a building, but it is so close that when they

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1 do the excavation, the roots are going to be destroyed. This one here is actually in
2 the building pad (indicating to overhead projector). It has to come out. So, it would
3 be cruel and inhumane to – for the one that isn't -- both the 24" -- to not take it out
4 and let it die a slow, agonizing death.

5
6 Mr. Schindler concluded his presentation by saying, in light of that, staff
7 recommends the removal of the 24" and 26" historic Live Oak trees with the
8 condition that the Applicant plant a total of five replacement trees and contribute
9 \$1,250 to the City's Tree Bank.

10
11 Chairman Williamson asked, the five replacement canopy trees, that's in lieu of one
12 of the trees, and I take it the \$1,250 is in lieu of the other?

13
14 Mr. Schindler answered, yes. Uh-huh.

15
16 Chairman Williamson questioned, has the Applicant agreed to this?

17
18 Mr. Schindler responded, yes, they have. And we do take cash, checks, or credit
19 cards. And you have had other instances where you have approved the removal of
20 trees that were...

21
22 Chairman Williamson stated, especially within the building pads. You can't put a
23 building around a tree.

24
25 Mr. Schindler said, yes. And adjacent to parking lots; where it's just not feasible.
26 Where the trees are not going to survive.

27
28 There being no questions of the Board for Mr. Schindler, Chairman Williamson
29 requested the Applicant to come forward and address the Board.

30
31 The Applicant said, from his seat in the audience, that he did not want to come
32 forward.

33
34 Chairman Williamson opened the hearing to public comment. Hearing none, he
35 closed that portion and entertained board discussion and/or a motion.

36
37 **MOTION:**

38
39 **Vice Chairman Swinski moved to approve the request, 2014-SP-08, to**
40 **remove two historic Live Oak trees (24" and 26") on property located at the**
41 **southeast corner of Business Center Drive and Heathrow Park Lane (Central**
42 **Parc Heathrow, Phase 3), Lake Mary, Florida 32746, consistent with staff's**
43 **Recommendation listed in the Memorandum (Staff Report) with the condition**

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1 that the Applicant plants a total of five (5) replacement canopy trees and
2 contributes \$1,250 to the City's Tree Bank. Member Boardman seconded
3 the motion.

4
5 Chairman Williamson requested a roll-call vote on the motion, which was
6 taken as follows:

7
8 Member Boardman - Yes

9 Member Gaudio - Yes

10 Member Sebald - Yes

11 Member Lackey - Yes

12 Vice Chairman Swinski - Yes

13 Chairman Williamson - Yes

14
15 The motion carried unanimously 6-0.

16 VI. Adjournment

17 The meeting was adjourned at 7:23 p.m.

18
19
20 _____
21 Danny Williamson, Chairman

Diana T. Adams, Administrative
Assistant