



PLANNING COMMISSION MEETING MINUTES NOVEMBER 30, 2016

CALL TO ORDER:

Chair Skone called the meeting to order at 6:03 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:

Chair Suzanne Skone, Commissioners Bryan Cairns, Daniel Hubbell, Lucia Pirzio-Biroli, Tiffin Goodman, and Jennifer Mechem were present. City staff was represented by Scott Greenberg, Development Services Director, Alison Van Gorp, Administrative Services Manager/Ombudsman, Evan Maxim, Planning Manager, John Kenney, City Arborist, Bill Vandewater, Utility Inspector, and Nicole Gaudette, Senior Planner.

Vice Chair Richard Weinman is absent.

SPECIAL BUSINESS:

Agenda Item #1: APL16-003: Barcelo Appeal of Notice of Violation (CE16-0068) – Open Record Public Hearing

Commissioner Skone opened the public hearing at 6:04 p.m.

The Appellant presented their appeal to the Planning Commission. Axel Buchwalter spoke as representative of Barcelo Homes. The Appellant argued that the NOV is inappropriate because the violation had not yet occurred. He also believes the violation is not supported by statute.

The intention of the developer was always to subdivide the property. They were told the redwood tree could not be permitted for removal because the property was not yet subdivided and the proposed home could be located elsewhere. A demolition permit does not count as construction work per the definition of construction. A tree permit cannot be issued until a building permit is issued. Because a short plat will be pursued, the location of the redwood would make one of the lots unbuildable. Therefore, the redwood could be removed because of the short plat. Barcelo Homes could be issued a NOV if it continues forward with development of the property because removal of the tree would have occurred within two years of construction as defined in city code. They have asked a landscape architect to propose remediation, and they are willing to provide remediation beyond what is statutorily required. The city approached the issue as though the property is a single lot. There was always an expectation that the redwood tree would be removed. The city was always supportive that this property would be subdivided into two homes. Axel stated that this hearing should be approached with the understanding that it will be two lots. NOV is improper because construction work has not yet occurred. The current punishment issued under the violation is not supported by code. The punishment can be financial but it cannot involve a restriction on future development of the property. They would like to perform remediation on the property in excess of the amount of the fine rather than pay a fine.

Commissioner Mechem addressed the Appellant. She stated she believes it is understood that a tree permit would be required. She asked him if he read the code before removing the tree. He responded that removal of a tree is directly tied to whether construction work on a property is ongoing. She asks if he believes that only construction work triggers the requirement for a tree removal permit. He believes it is only needed if removal is within two years of construction work.

Commissioner Hubbell asked what date the tree was removed and what was the date of the building permit. The tree was removed July 13th. The application for a building permit was applied for May 5th. Hubbell asked if intent was established. Appellant stated development was always intent. Hubbell asked for clarification that the Planning Commission is not supposed to assume construction would occur even though a building permit had been submitted, however the Commission should assume that the property will be subdivided though it hasn't been subdivided yet.

Commissioner Pirzio-Biroli asked when John Kenney sent the email regarding the tree. She pointed out that there was communication regarding protection of the tree before it was removed. She asked how such a large tree is erroneously removed. Appellant stated that the decision regarding protection of the tree had changed just days earlier.

Chair Skone asked the Appellant to clarify the site plan. Has Barcelo submitted a mitigation plan yet? Appellant stated that they did not have time yet due to time limits regarding the NOV process.

Commissioner Mechem asked if the site plan in the packet what was submitted for the demolition permit. Appellant said yes and stated that they did not intend to remove the tree at the time of demolition.

Evan Maxim, Planning Manager presented the City's response to the appeal to the Planning Commission. Evan Maxim also provided the Planning Commission with two public comment letters from the same group of neighbors consisting of Dan Grausz, Clare Meeker, Mike Gossler, and Carolyn and Mark Boatsman. The first question needed to be answered is was there any substantial error in the procedure that the city used to issue the notice of violation. He asserted that the answer to both questions is "no". The second question is did the evidence of the record fail to support the NOV. He asserted that the answer to both questions is "no". The Commission should focus only on those two questions. The Appellant must bear the burden of proof to prove that a violation did not occur.

Construction limits excluding the tree were on the demolition permit. During building permit review Barcelo was told that the tree could not be removed. Barcelo did not respond to the comment, but rather removed the tree. Refer to 19.10.020(B) to determine if a tree permit was required. (Evan reviewed this section of code with the Commission.) The building permit review was halted due to tree removal. Because of this, staff has not determined if there is a critical tree area on site and therefore if any trees can be removed. There was a brief discussion with the Planning Commission regarding tree regulations. Evan stated there was a pattern of permits. The Appellant has made clear their intent to commence construction work on the site. Evan read the definition of construction. Per the definition, construction work has already commenced. The argument that construction work has not begun is not a valid argument. Barcelo was told three times by the city not to remove the tree, all within a week of tree removal. Barcelo's argument about miscommunication is not credible. As for the civil penalty argument, the city is following the code as closely as it can. There is no basis to remove the civil penalty as Barcelo has requested. If the Commission does not uphold the violation, the city would be sending a message to the development community that they can disregard the city's regulations and there will be no penalty. Evan read the code section containing the penalty provisions, MICC 19.10.120(B). He stated that twice you hear the word "area". This means the area where the tree was located prior to removal. To interpret the sentence to allow remediation elsewhere could be problematical. The question now is whether a NOV was issued correctly and whether the corrective actions were appropriate. Evan asserted that they are. Barcelo removed the tree without permits, and now they want to put a house where the tree was. He recommends that allowing remediation elsewhere and allowing Barcelo to benefit from their action is not the right thing to do.

Commissioner Hubbell asked Evan to confirm that preservation of the tree was noted during building

permit application. Evan directed him to Exhibit B which showed the date of John Kenney's comment regarding protection of the tree. When was the MOV issued? Issued August 1st. Hubbell asked about an inspection report. Evan states that Exhibit D show Bill Vandewater's inspection notes. Evan read a portion of the inspection note that was eliminated from Exhibit K that was the Appellants' exhibit.

Commissioner Mechem stated that another note, other than the note discussed by Hubbell, was omitted from Exhibit K.

Hubbell asked about the time frame during which remediation must occur. Evan stated the NOV contained the date by which remediation must occur. He read from Exhibit F, the NOV "submit remediation plan by September 26, 2016". Hubbell asked generally about the review process.

Commissioner Cairns wants clarification – did a violation occur and what is the violation? The subdivision issue should be addressed later? Evan clarified that the subdivision will be a later discussion.

Pirzio-Biroli asked if the same superintendent was always on site. He said yes, typically. She asked if they coordinated. How many years has he been an inspector? Is it typical for large trees to be removed accidentally?

Skone asked of the same contractor that removed the cypress hedge that same that removed the redwood tree. Appellant stated that Councilmember Grausz removed the cypress hedge. She asked if there was a bill. Appellant stated they paid a contractor to remove debris, and the tree was accidentally removed.

Pirzio-Biroli asked John Kenney what discussions he had about this tree with the developer. John Kenney stated there were discussion during pre-application meetings. He visited the site and tree protection measures were installed around the tree.

Mechem asked if Evan could define the difference between remediation and replacement. Evan stated. Remediation often addresses loss of value. Replacement is more of a calculation such as replacing a tree two to one. Mechem asked about the maintenance of mediation versus replacement trees. Evan could not explain the difference.

Public Testimony

Mark Cohen 3220 73rd Ave. Lives at a neighboring property. The city has done a phenomenal job. It is important to the citizens of First Hill that the city follows through with this. He read from a letter submitted by neighbors of the property. Even if the fine is upheld, the travesty has occurred. He described benefits of the tree that were lost because of its removal.

David Chifferon 3260 74th Ave SE. 2nd house down from the property. It is clear what the intention of the appellant was. The property is worth more if there are two clear lots without a tree in the middle. He took the matter into this own hands when he couldn't get what he wanted. Paying the fine is just a cost of construction because he will get what he wants

Carolyn Boatsman 3210 74th Ave SE. The intent of the Appellant was clear. It is important that the penalty be issued.

Robert Laidlaw 3220 74th PI SE. The city is justified in the violation and the fine. The site plan clearly shows there must be protection of the tree including details for how protection must be accomplished.

Calling the tree removal an accident is incredible. The removal happened quickly when it became clear that the removal of the tree would not be allowed. The developer should be scrutinized.

Dan Grausz 3215 74th PI SE. He was one of 6 that submitted a formal statement. Regarding Bill's inspection comments, the tree removal was noticed within about 3 hours of being told not to remove the tree. Hydroseeding has died because it was not watered. He has attempted from the beginning to work with Barcelo. The violation must be redressed.

Michael Gossler 3212 74th PI SE. His house is located directly east of the property. It is an affront that this is a mistake. The site had been cleared for some time, the house was demoed for some time before. It is impossible that the tree was removed as part of debris removal. He believes it was done due to added value of building a house extending to where the tree was is enormous. The violation and penalty should be upheld.

Phyllis Chang 2988 74th Ave. Currently need to remove two old trees from their property. They have applied for a permit. When development occurs she is seeing damage to trees even when trees are being protected. Tree root systems were damaged when the builder constructed their house. Encouraged the community to report issues.

Sue Johnson 3208 73rd Ave SE. Her father devoted time to preserve trees and open space while on the Planning Commission. Take a stand now before more trees get cut down.

Ira Appleman 9309 E Shorewood Dr. Concerned with process. The planning commission needs instruction about how to hold a hearing.

Rebuttal

Appellant: He addressed the comment by Vandewater regarding the time of his inspection and comment regarding tree removal. He states there has been substantial error in procedure. Question about whether a tree permit was required. He states that a permit was not required for many reasons. What is in dispute is if construction work had begun. They base this argument on the definition of construction. The city is basing their violation on the intent to perform construction. An application does not equal construction. The city was in agreeance that the tree was going to be removed upon subdivision of the property. The situation changed when the city decided to review the property as a single lot. Barcelo has not received a benefit from the removal of the tree. Barcelo made the mistake of removing the tree before permission was granted for tree removal.

Evan Maxim: The Appellant puts weight on the fact that the tree would always come out. The city has never agreed to this. The Appellant must prove that this was always the intent. He states that the city is not under an obligation to issue a building permit. The city must approve a permit if it complies with the regulations in effect at the time of application. To the extent there is a complied discretion on the part of the city as far as approving a building permit; that is factually inaccurate. The appellant had stated that the only way to approach remediation was to file an appeal and they couldn't turn in the remediation plan. That's just not true. The appellant could have brought he remediation plan forward before the appeal hearing. The inspector stated the he visited the site mid-day and noticed the tree was removed. Evan also stated that staff swore in under oath. The property owner is responsible for the site, no matter who removed the tree. Evan projected the staff report on the screen showing the definition of construction work. The intimal permit issued by the city was the demolition permit. There are other permits currently in review by the city. The Appellant has asserted that they have gained no benefit and that tree removal was a mistake. Evan asked the Commission not to give the Appellant a benefit. Appellant states there was an assertion that the city had allowed removal up until days before

the tree was removed. Evan stated that just because the city had not discussed protection of the tree does not mean removal was allowed.

Goodman asked about clarification about a series of permits and the language in the construction definition regarding two years. Evan is looking at the demolition permit as the commencement of construction. The Appellant is focused on the first sentence in the construction definition.

Hubbell asked if there was an identifying number for a permit, and if there was a permit application that has not been approved. Evan answered "yes".

Commissioner Skone closed the hearing at 8:18 p.m. The Planning Commission recessed for 5 minutes.

Deliberation

Mechem: Wanted to discuss the Appellant's arguments and the city's rebuttal. Based on the four criteria, she feels confident that the City's decision should stand.

Commissioner Skone asked for the four appeal criteria to be projected on the screen.

Goodman: She believes the criteria are met. What constitutes the issuance of a permit? Does it have to be a building permit or any permit related to construction? It does not make sense if construction only commences at the issuance of a building permit. She thinks the city's decision should be upheld.

Hubbell: The evidence shows that the tree was intended to be retained. Agrees with Goodman about the permit being applied for and under review, and another permit had been issued. The intent of the code is not to allow actions to be taken simply because a building permit had not yet been issued. There was time for a tree permit to be issued if requested by the Appellant. There was no indication on the permits that the Appellant intended to remove the tree.

Pirzio-Biroli: Demolition is typically the first start of construction. Cutting the tree is in direct violation of the building permit. There is no evidence that tree removal was always intended to occur. Tree removal was not an error.

Cairns: The Appellant's argument is that the property will be divided and therefore the tree would come down. That is not of consideration here. He supports the City's decision.

Skone: Barcelos' documents indicate that the tree is going to be protected. Whether there will be one or two houses is irrelevant.

Hubbell: Talk of malice and accident is immaterial to the conversation. The property owner is responsible for what happens on their property. The documentation shows a clear set of directions that were ignored. He moved to adopt the Findings of Fact and Conclusions of Law and uphold the issuance of the Notice of Violation and the associated civil penalties and the requirements for remediation and authorizes the Planning Commission Chair to sign the Findings of Fact and Conclusions of Law on behalf of the Planning Commission.

Mechem seconded the motion.

The Planning Commission unanimously approved the motion.

APPEARANCES:

No one from the public spoke during the Appearance portion of the meeting.

APPROVAL OF MINUTES:

Commissioner Mechem made a motion to approve the July 20, 2016 and November 16, 2016 minutes without changes. Commissioner Hubbell seconded the motion. The motion passed unanimously.

One typo in the November 16th minutes. The third paragraph down on the second page, "The Commission suggested looking into holding the March 15th public hearing at Northwood School four..." delete the word "four".

REGULAR BUSINESS:

Agenda Item #2: ZTR16-005: Zoning Code Text Amendment related to Religious Institutions – Public Hearing

Nicole Gaudette, Senior Planner introduced the Religious Institutions zoning code text amendment.

Chair Skone opened the public hearing at 8:43 PM.

Nicole Gaudette, Senior Planner, introduced the Religious Institutions zoning code text amendment. The amendment would eliminate the need for residential uses on religious institution properties to apply for a variance for extra impervious surface.

Commissioner Cairns questioned the limit of 4,999 square feet of impervious. Why that number?

Commissioner's Hubbell and Mechem discussed why the impervious limits provided were acceptable.

Commissioner Pirzio-Biroli was concerned about the exemption language not being in the variance section. She also asked if a project required greater than 4,999 s.f. of impervious, would the 4,999 be subtracted.

Commissioner Cairns asked about adjacent lots being used by a place of worship, or a lot owned by a place of worship that is not on the same site as a place of worship.

Commissioner Hubbell suggested new language to clarify the limitation to the exemption found in subsection ii.

Commissioner Mechem asked if this exemption should apply to all public institutions.

Public Comment

Mark Cohen 3228 73rd Ave. He identifies religiously as a Mercer Islandian. He believes the proposed amendment discriminates against him. Also, what happens if the property is sold?

Chair Skone closed the public hearing at 9:13 p.m.

Deliberation

Commissioner Hubbell explained that this amendment was equalizing the standards for building a residence, so the same regulations apply whether or not the house is on an institutional property.

Commissioner Mechem stated that the public comment was regarding the favoring of religious institutions over other institutional uses. She again mentions that maybe this exemption should apply to all public institutions. The Planning Commission discussed this option. It was decided that this was beyond the scope of work.

Commissioner Hubbell made a motion to recommend that the City Council approve the proposed amendment MICC 19.02.020(D)(2) relating to allowing for an additional amount of impervious lot coverage for residential uses at places of worship without the need to obtain a variance as allowed for in MICC 19.020.04(D)(4), provided that attachment 1 shall be modified as follows: "A residence and its associated improvements, as described above, may only be exempted if 4,999 square feet or less or 20% of the lot area, whichever is less".

Cairns seconded the motion.

The Planning Commission unanimously approved the motion.

OTHER BUSINESS:

The Commission agreed to meet at 6pm on both December 7th and on December 12th.

ANNOUNCEMENTS AND COMMUNICATIONS:

None.

NEXT MEETING:

The next Planning Commission meeting is scheduled for December 7, 2016 at 6:00 p.m. at Mercer Island City Hall.

ADJOURNMENT:

Chair Skone adjourned the meeting at 9:35 PM.