

SUMMARY OF MINUTES

COMMUNITY DEVELOPMENT/HOUSING/GENERAL GOVERNMENT COMMITTEE

4:07 P.M., TUESDAY, JANUARY 13, 2009

COMMITTEE ROOM

ROOM 239, CITY HALL

MEMBERS PRESENT: Council Member Nelson L. Malloy, Jr. Chair
Council Member Dan Besse, Vice Chair
Council Member Evelyn A. Terry
Council Member Molly Leight

OTHERS PRESENT: Council Member Joycelyn V. Johnson
Council Member Robert C. Clark

Chair Malloy called the meeting to order and stated that, without objection, the Committee would first consider the Consent Agenda. Council Member Besse requested to pull Item C-3 for information only. No other items were removed for discussion.

Council Member Besse made a motion to approve the balance of the Consent Agenda. The motion was duly seconded by Council Member Terry and carried unanimously.

CONSENT AGENDA

- C-1. RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION FOR NEIGHBORHOOD STABILIZATION PROGRAM FUNDS TO THE STATE OF NORTH CAROLINA DIVISION OF COMMUNITY ASSISTANCE.
- C-2. CONSIDERATION OF ORDINANCES AMENDING THE CITY CODE:
 - a. ORDINANCE AMENDING CHAPTER 6 OF THE CITY CODE ENTITLED "ANIMALS AND FOWL".
 - b. ORDINANCE AMENDING CHAPTER 26 OF THE CITY CODE ENTITLED "GARBAGE AND TRASH".
 - c. ORDINANCE AMENDING CHAPTER 62 OF THE CITY CODE ENTITLED "SANITATION".
- C-4. APPROVAL OF COMMUNITY DEVELOPMENT/HOUSING/GENERAL GOVERNMENT COMMITTEE SUMMARY OF MINUTES - *December 9, 2008*.
- C-3. REPORT ON POSSIBLE RETIREMENT INCENTIVE PROGRAM.

Mrs. Martha Wheelock, Assistant City Manager, noted that staff has proposed a retirement incentive program to be offered to employees that meet eligibility requirements, as a means of reorganization and restructuring. She also noted that information in the agenda packet provided information regarding the monetary implications and details of the incentive package.

GENERAL AGENDA

G-1. ORDINANCE ORIGINALLY PROPOSED BY THE COMMUNITY APPEARANCE COMMISSION AND OTHERS TO MODIFY CHAPTERS A AND B OF THE UNIFIED DEVELOPMENT ORDINANCES BY AMENDING EXISTING LANDSCAPING STANDARDS AND CREATING TREE PRESERVATION REQUIREMENTS - UDO-122. [*Recommended by Planning Board.*]

Mr. Paul Norby, City/County Planning Director, stated that in 2004, the idea of a tree protection ordinance was brought forward by the Community Appearance Commission, whereby they filed a Unified Development Ordinance (UDO) application for an amendment they composed, which was considered in 2004 by the Planning Board. The proposed amendment only dealt with non-residential development, and the Planning Board recommended denial of the application. The proposed amendment came before the City Council and County Commissioners in 2005, and after hearing, both entities remanded the item to the Planning Board. In 2006, per a grant from the Winston-Salem Foundation, a facilitator was hired and a tree committee was assembled. The committee met through October 2007 to work through issues. A report was prepared at the end of 2007, and staff prepared a draft ordinance responsive to the report, which was completed in spring 2008, which was reviewed by the Committee in May-June 2008.

Mr. Glenn Simmons, Principal Planner, and Mr. Kirk Ericson, Project Planner, gave the presentation of the Planning Board proposal.

Mr. Norby stated that the proposed ordinance recommended by the Planning Board in December and the version proposed in June 2008, was not recommended in October 2008.

Ms. Jane Stegner, 2393 Jefferson Avenue, encouraged the Council to recommend the original tree ordinance presented earlier last year. She noted that large trees must be preserved now as they may not be alive 40 years from now. She also noted that she believes the City can afford to hire arborists to enforce the ordinance to preserve the quality of life in the community. She further noted that the maintenance of trees protected should include all trees and just those planted in 1980 or after.

Mr. Charles Wilson, 445 Marshall View Court, stated that he owns two townhomes on Marshall Street near Brookstown Avenue and that he and his wife have lived there, downstream from Tar Branch for 11 years. He noted that another section of that community was built six years prior. In 2004, a culvert under the property would not accommodate the runoff and two units flooded due to the storm drain, rather than the creek. In the spring of 2008, there was a second flood, where four homes were affected costing a total of over \$200,000 in damage. Three automobiles located inside the garage of the townhomes were totaled. About two months later, there was another flood, which didn't cause as much damage and noted that when driving upstream, it can be seen that a number of

acres have been covered in asphalt. Mr. Wilson stated that the culvert along Branch Street cannot manage the water that flows into it and surrounding trees could help to absorb water as it flows. He also stated that residents cannot obtain flood insurance.

Mr. Gus Preschle, 7711 Lassiter Road, Clemmons, stated that he loves Winston-Salem and he volunteers and spends money in the area. He stated that he was representing the Foothills Sierra Group and noted that they circulated and received over 700 petition cards last year in support of a tree ordinance. He presented a picture of Hillcrest Golf Course that is now a mixed use development, and noted that trees were removed, the land was regraded, and new trees were planted. He attended the Planning Board meeting and questioned why the ordinance was passed as was written. There is a strong sense that an ordinance is needed, but there is an underlying sense that there are enough trees present. There is no science or content about trees from five, ten, 20 or even 100 years ago, or information about how many trees there should be now. He noted that any tree cut down diminishes breathable air and drinking water and he favors a 10% preservation of existing trees.

Ms. Melynda Dunigan, 1875 Mallard Lakes Drive, noted that she served on the tree ordinance committee and disagrees with the Planning Board's statement of achieving the substantial recommendation of the tree ordinance committee. She also noted that the two key aspects of the ordinance should be the preservation of trees and preservation of quality trees. She further noted that the new version provides no safeguards for preservation, only requires tree save in undevelopable areas, and allows trees as small as three inches in diameter to qualify in tree save areas. Ms. Dunigan stated that smaller trees cannot provide air quality and stormwater management benefits, and are less desirable than planting new trees. She also stated that clusters of trees in small, dense areas, will never achieve mature size. She further stated that the Planning Board amended the ordinance to allow an additional alternative compliance where land in an undevelopable area could be used for recreational purposes and trees don't have to be preserved as long as there are trees planted elsewhere on the site or tiny seedlings on a slope. She noted that the tree save component has been weakened to very little substance and she could support the version considered at the October Planning Board meeting, and would be willing to further compromise with discussion. The Winston-Salem Neighborhood Alliance voted to support the October ordinance, as well as the Garden Club Council.

Mr. Bill Powell, Winston-Salem/Forsyth County Schools, 1605 Miller Street, stated that he is not for or against the ordinance. He stated that the second version is a more manageable version, and the same amount of money would still be spent on trees, but not the management of the trees. The second version also gives credit for environmental regulations and noted that Reagan High School could not have been built under the proposed ordinance. He presented a picture of Reagan High School that was cleared, and has demonstrated regrowth within five years. He also stated that much of North Forsyth High School was graded and is now regrown to full woods and will more than exceed a 10% tree save in time. He further stated that there will be other administration problems because if more land is used to preserve trees, more land will need to be purchased for building, adding more utility costs. Mr. Powell noted that the land could be regraded and new trees planted at one-third of the cost.

Mr. Robert Vorsteg, 3620 Marlowe Avenue, stated that the ordinance would be more effective if it

was written by one side, such as the Sierra Club or builders within the Winston-Salem Chamber of Commerce. The tree ordinance committee was formed to deliberate and negotiate an ordinance, they adopted a consensus method of voting, and if they were not happy with any given provision, they could still support the ordinance. He stated that the version presented by the Planning Board is an about face on the consensus method of the tree ordinance committee. He questioned who participated in the compromise for this ordinance. Mr. Vorsteg noted that the Planning Board did not utilize a democratic process to provide a version of the tree ordinance, and urged Committee members to consider the October version.

Mr. George Bryan, 1001 Reynolda Road, stated that there was plenty of room in the first version to make exceptions on site approvals, as well as ways to approach building that will affect the type of ordinance that could deal with stormwater, heat radiation and aesthetic beauty of the community, and urged the Committee to consider the October version.

Chair Malloy presented a letter from Elyce Jung, 521 Lynhaven Court, whereby she included a published letter to the editor of the Winston-Salem Journal in support of the October version. He thanked citizens for expressing their concerns and thanked members of the tree ordinance committee for their efforts.

VERBATIM COMMENTS FROM COUNCIL MEMBERS

COUNCIL MEMBER LEIGHT: Thank you Mr. Chairman, I must say I appreciate Mr. Vorsteg's comments. It truly was eloquent and truly is the way I think about this whole process in that it has been a series of compromises and I do believe that this last version, coming from the Planning Board has just totally denied that whole compromising of the citizens in this community. Certainly, if I had written the tree ordinance on my own, it would be a lot more stringent than this compromised version is. I think that the Planning Board did reduce the strength of the October version of the tree ordinance in part, as a money-saving effort given the situation we find ourselves in as, with the hiring freeze. The City is freezing hiring, but it cannot be absolute. There are too many positions in the City existing and, and those that we'll need in the future that are absolutely needed by our, our, for the health of our, our City. I think that the positions, like a, forester, you know a tree expert, inspector, are essential to the future of our City. As is a strong tree save ordinance. We are in the process of reducing personnel through, through retirement packages and therefore I think that there should be a possibility of retraining people who are already in the City government or hiring someone to take a position. And this isn't going to happen tomorrow folks, because you have to figure that right now, there, there building doldrums don't require a tree expert or anything like that, so it's not as if it's an eminent necessity to start hiring tree experts. I simply can't support holding our tree canopy hostage to what would maybe amount to \$100,000 in salary a year. That to me, is absolute false economy. Our trees are much more important than that. For the most part, I do support the October version, although as I said, I would have, I would have made it a little stronger. And in fact, there are a couple of places that I would like to point out to my colleagues that I think perhaps need to be looked at. One, the first one, I'm going to have to refer to my cheat sheets here. The idea of not, some of the changes, for example some of the tree save areas and the way to calculate that, I realize that one of those possibilities of how to calculate the tree save area was in fact eliminated because of the idea of not needing professionals who might be needed. So I think we need to take a look at that and whether we need to go back to a two-pronged tree save calculation. I,

the next thing I would like to take a look at is, you know, this is a tree preservation ordinance, or should be. That's the way I look at it. Not, just a tree maintenance or tree planting ordinance, although it can be all of those things. I think that it, it needs to be a cumulative tree preservation ordinance. I am having a very hard time with allowing exemptions that bundle all of the tree preservation items together so that with the (inaudible) buffer and your side yards and your street yards and whatever, you might be able to achieve the 10% save area. I think there perhaps should be some sort of percentage reduction required, if in fact you, have your 10% tree save area could be perhaps reduced to 8% if in fact it's contiguous to the other, other buffer yards and etcetera. So I, I think that's something we need to look at. I, I'm very unhappy with, with it being that you really don't need to preserve trees if you do all of your buffers etcetera. And if that is a possible outcome. Let me see. Something that I think, that's in the new version that is totally unacceptable to me, and I would not be able to vote for a version that did not require non-residential development to preserve the 10% or allow unbuildable areas to count as their 10% tree save area. An unbuildable area is an unbuildable area and should in fact, those trees have to be preserved, but there, that should not allow development to then totally clear cut the rest of the property. So, that, that's what, another thing that makes me prefer the October version. Another piece that I'd be interested to hear what some of my colleagues have to say, is the exemption of GMA-5. I am sure, I mean, out in GMA-5 there are big five acre lots and probably on those lots are the 10% percent necessity, needed to, to fulfill what this ordinance asks. But then there are also Dell's that cut hundreds of acres or however many acres it was that's probably, is that out in GMA-5?

MR. NORBY: No.

COUNCIL MEMBER LEIGHT: No, that's out in the County? No.

MR. NORBY: It's in the City limits and it's in GMA-3.

COUNCIL MEMBER LEIGHT: Three, okay. But there are, that is a possibility that some of those areas that are now GMA-5 would in fact face the, the same, you know, face being clear cut and so I would think that even though there is not a problem now and I appreciate the fact that, that's, that the staff keeps an eye on that. But the fact remains that that could be a problem and I would definitely like to see the ordinance throughout the city. So, at any rate, I would very much like to see us forward the October version to the, with the, with the couple of changes like GMA-5, to the whole Council. Thank you.

MR. NORBY: If, if I could Mr. Chairman, just to clarify, there is no part of the City zoning jurisdiction that's in GMA-5. It's all in the County jurisdiction.

COUNCIL MEMBER LEIGHT: Yep, that's what I'm afraid of.

COUNCIL MEMBER BESSE: Thank you Mr. Chair. I'll have some more comments later, but I just wanted to start with some questions really at this point. These will probably be for staff and, and gentlemen, just whoever is the best person to take the question, please take it. And frankly I agree with Council Member Leight that a question of whether or not we would need two additional staff people, we really cannot afford to make dispositive of the question of an issue this important. But I am also curious as to how you made that determination. It seems to me in both versions, there

are equally complex methods for calculating the area to qualify for tree save. Can you point to the specific provisions on which you based an apparent determination that the October version would require hiring two additional professional staff whereas you make no, you know, no assumption that any additional staff would be needed under the December version?

MR. SIMMONS: Mr. Besse, I'll try to take a stab at that. Part of this is based on comments we received from the Inspections Division, so the folks in Inspection may want to comment on this as well. The primary difference between what the October recommendation, or proposal was versus the Planning Board recommendation is in the area of alternative compliance. If you require all, 10% tree save only in areas that are off limits for development, those areas are off limits for development and therefore they really don't have a need for any alternative compliance provision to determine which trees will be healthy and could be saved and not. If, on the other hand, as the October ordinance proposed, if you say, only have 10% trees on site, anywhere on site, some of those trees might exist in areas that might be in the heart of a developable area. Let's say that there's a tree that in the middle of a smaller site might prohibit building going in there at all, given the other requirements of buffer yards and, and stream buffers and so forth, then, then that tree is either going to have to remain and no development occur or some substantial compromise and, in the development would have to be done to, to accommodate that, that one tree which may or may not be a tree that would be worthy of being saved. So, who makes the determination of whether this tree is worthy of being saved and has to remain there in spite of, of, of any other considerations that may have a bearing on the, the impact on the development on whether through the alternative compliance provisions that tree would be determined to be unhealthy or, or maybe of such a size that in light of the other criteria that we discussed at this Committee last year about alternative compliance provisions, which would then allow the Inspections Director to make that decision based on input from informed, knowledgeable, educated folks on his staff and as to whether or not that tree would be required to be saved, that that's the essence of another problem. It's that someone who would have to make a determination as to the health of the tree, whether the tree in context with all the other competing objectives of our development ordinances should remain or not. It was believed at that time that it would require both a, a developer to have an arborist come in and certify the trees to be saved where they are located in areas outside of areas that are not limited, restricted to development and it also requires someone from the City to be able to evaluate those, those recommendations of the developer's arborist. So, you know I think that the key, the key thing there is the subjectivity of that aspect of the alternative compliance provisions. The requirement that, that someone in the Inspections Department make that call as to whether the tree has to remain or whether it, in some context it makes sense that due to other competing development objectives, that tree could be removed. And, I don't know if Charlie would like to cover the essence of that part of your analysis of why two additional folks would be required or not, but you can trust that.

MR. NORTON: I, I think that Glenn summarized pretty much the first ordinance as some of the speakers today have alluded to, requires a determination of a quality of a tree based on it's location with, among other trees and someone with an expertise and background has to make those determinations that the tree is healthy, it's viable, it will most likely survive. And also, to evaluate the stands of trees and the types of trees that may be within a grove or a stand of trees and that within that particular stand or grove, there may be only certain numbers of trees within that, that would be eligible to count. So, it gets down to quite a science and expertise to make that determination in the field on both the developer's side and then on the enforcement side to see that

what has been shown is actually remaining and verifying that their assumptions were correct, where the new version, pretty much takes it to simple math. You can take a diameter of a tree, you get a certain amount of area based on it and it takes out the equation of quality and determination with expertise.

COUNCIL MEMBER BESSE: Alright gentlemen, thank you. And let me test my understanding of your answer. Basically, you've pointed to two provisions in the October ordinance, 3-4.2.1(A)(3)(d)(VI), which is the only reference I find to health of the tree. If the reference to health of the tree was eliminated, that would be one of the two provisions you've cited as requiring the hiring of two additional staff. The other provisions that you have referenced are also in 3-4.2.1(A) and they are both in sections one and two in the definition of tree save area and the calculation of tree save area, where it requires a certified arborist or urban forester, in, to make the calculation of the area. If that provision were eliminated and the reference to tree health were eliminated, as I understand your response, then that would completely eliminate your calculation that two additional City staff were required to be hired. Tell me if I'm wrong.

MR. SIMMONS: That's why I'm looking for the reference that's the alternative compliance provisions that...

COUNCIL MEMBER BESSE: That's in the alternative compliance provision. And it's the only time that health is used in the alternative compliance provision as I read it. The only, only place the word appears.

MR. SIMMONS: I would suggest that's not just the health, but also whether this tree in context with the other qualifying criteria that might allow for alternative compliance provisions due to prevail over the tree. In other words, if we're looking at...

COUNCIL MEMBER BESSE: Pardon me, but there is no reference in the alternative compliance to an individual tree. It's requiring, it, it's referencing broad brush value determination of the, of the trees as a whole. And I found that, you know, noteworthy when you were explaining the basis for the termination that there was a lot of emphasis put on the potential health of any individual given tree. But, you know, sure you need an arborist to tell you that. But, you know, this is pretty broad value determination as opposed to something that you would, it seems to me that you would require necessarily an individual professional degree for, of that specific type.

MR. ERICSON: Council Member Besse, one thing that has not been pointed out thus far that also adds to the complexity of ordinance administration, is the version in October requires compliance to make sure that trees on residential property are also there on perpetuity and there's also simplified provisions in the December version going from basically instead of a 10% replanting of trees removed on site, there is a simpler provision of just two trees per lot. In our discussions with Inspections we also determined it would be simpler for them when they're doing their CO's of the property just to check that two trees are on the lot basically, rather than to review a complex site plan for each residential subdivision for tree save area, as due to the fact that they don't review residential subdivisions for landscaping requirements with the exception of buffer yard and such currently.

COUNCIL MEMBER BESSE: And where is that provision contained please?

MR. ERICSON: There's an enforcement provision on page five where it talks about planning and maintenance that refers you to section 3-4.2.1(b)...

COUNCIL MEMBER BESSE: Just a moment please. 3, 3-4...

MR. ERICSON: On page ten...

COUNCIL MEMBER BESSE: Okay, you've got a different numbering system, so please just refer to the section numbers.

MR. ERICSON: Okay, it's on section 3-4.2b...

COUNCIL MEMBER BESSE: 3-4.2.1 or...

MR. ERICSON: 3-4.2.1, I'm sorry. And then B, tree maintenance requirements, maintenance of trees, satisfying the tree preservation requirements...

COUNCIL MEMBER BESSE: Hang on, I'm sorry. 104, okay. B, tree maintenance requirements, okay. Maintenance of trees satisfying the tree preservation requirements. Land owners responsible for maintaining all new and existing trees, so that's, that's area number three that, that you're noting as requiring additional staff.

MR. NORBY: Council Member Besse, let me, I think we should go back to the alternate compliance thing too because I, I think it, as it has been said it's more complicated than just sub-six there the size, health and species. Keep in mind, this is, these judgments are being made by the Inspections Director or designee and it's requiring them to examine in number, sub-one, the site layout including whether there are reasonable site layout options available that would further minimize the need to waive or reduce tree preservation requirements. That...

COUNCIL MEMBER BESSE: However, that is not an arborist. An arborist doesn't make that kind of determination. That would be someone who is otherwise prepared to evaluate site layout options.

MR. NORBY: Right, but this does assign it to someone in the Inspections Department and does, considering getting away from these economic times, if we have a pretty robust economy, a lot of development going, there is a lot of analysis that has to go on on multiple sites about are there some theoretical site layout options that would minimize the need. So there's a fair amount of analysis involved with that. Sub-three says conformance the proposed development with the recommendation of area plans and other adopted documents. That means they're going to need to have some process of communicating with Planning, because they're not going to always know all the details of area plans there, surrounding development patterns, they may or may not be fully familiar with the surrounding development patterns so, all of those things are things that they will have to spend some time looking at on that in addition to making all the, checking all the calculations on the previous page concerning the tree save area and how you define it with each individual tree.

COUNCIL MEMBER BESSE: Do we not have staff on-hand already who are capable of making all

those analytical judgments, who are professionally trained to make that kind of analysis?

MR. NORBY: I think if, if there, Inspections is staffed at a current level now, I don't want to speak for Charlie, but I think if anything, they are under-staffed to deal with their workload, so this is adding additional time to them to...

COUNCIL MEMBER BESSE: And I think that we could certainly say the same about any number of City departments, but this is the first time I can recall staff or the Planning Board coming to us and saying don't do something because it will require additional staff, where on any number of occasions, I can recall, it being, clearly adding complexity to, to requirements or additional requirements to our Planning and Zoning ordinance that will require a lot of staff time to review and calculate, so I'm trying to determine what makes this unique.

MR. NORBY: I would say this Council Member Besse, from the very beginning of discussion of this tree ordinance, back even in 2004, I know that I personally have said on a number of occasions that the ordinance should not be adopted unless there's sufficient staffing that's provided to do that because if it's just loaded onto existing staff, it would be ineffectively administered and enforced.

COUNCIL MEMBER BESSE: Yes, and, and I'm not challenging that. What I am querying is why this is a unique situation in which you make that recommendation that you have not made about other equally complex and time-consuming changes that we have made in the past few months, or you know, past year, certainly. So, what I'm, what I'm trying to get to, you know, in this instance is, are there provisions that, in my calculation as an elected official making the ultimately up or down vote on something, I need to treat as unique to this ordinance. Such as a requirement to hire staff that we presently don't have that are qualified. Or do I need to simply make an evaluation about what's the most important use of staff time. That I make, that we all make in every other adoption of an ordinance that increases complexity.

MR. GARRITY: Council Member Besse, what I'd like to do maybe is bring, bring you back a detailed analysis of the duties. Initially talking to Inspections, they asked for three positions, we whittled it back to two positions. But I'd like to bring you, if you want, want that information, we'd have to bring you back a detailed analysis of the work product for each site plan and what other alternative things you might, this Council might deem as not being as much of a priority.

COUNCIL MEMBER BESSE: I'd be happy to see that information because one of the things that, that I would want to evaluate in the adoption of the final ordinance form is are there things that might be nice, but they're not necessary? Getting something going that we might draw out, at least temporarily, in order to avoid any legitimate need for you know, immediate additional staff hire to do a good job, without effectively gutting what we're trying to do. So, thank you, I had a couple other questions, and thank you gentlemen for you know, you know going into, into additional details on that. Under the October version, it would seem to me that otherwise undevelopable areas including buffers, wet, treed wetlands on site can count as part of the tree save area, is that correct?

MR. SIMMONS: That's correct.

COUNCIL MEMBER BESSE: So basically, the only, the only substantive difference between the

October and the December versions in that is not whether you can count those areas as part of your tree save area, but whether that's all you possibly have to count as part of the tree save area, and, and so December says, you know, you can't be required to go beyond otherwise undevelopable areas. Is that, have I got that?

MR. SIMMONS: I think that's correct the way you've stated it, yes sir.

COUNCIL MEMBER BESSE: Can you tell us, off the cuff if any of the other cities that are cited in the report, our peer cities in North Carolina, is already having tree save ordinances. You know Greensboro, Raleigh, Durham, Charlotte, take the approach recommended by the Planning Board, of not having any tree save requirements beyond the otherwise already undevelopable areas.

MR. SIMMONS: There are other, I'll let Kirk address this, but also comment after he makes his comments I think.

MR. ERICSON: Council Member Besse, like many things that we work with in the Planning staff, tree ordinances are very unique based on the jurisdiction they're specific to. There's nothing that we're aware of that's along the lines of what the Planning Board has recommended in their ordinance with more of a, less of a focus on tree save and more of a focus on tree planting. However, there's varying degrees of stringency of tree planting and preservation provisions in the four major cities that we reviewed, which would be Charlotte/Mecklenburg County, Raleigh, Durham City/County and Greensboro. Some of those such as Charlotte have fairly substantial provisions for residential tree save and limited provisions for non-residential tree save. Others such as Raleigh have a sliding scale based on what zoning district you're in and other factors. Greensboro, of course does not have a very stringent tree ordinance. In fact, our landscaping standards are somewhat superior in various aspects currently as presented in the UDO. And Durham has the largest tree save component which is generally in the 20-25% range.

COUNCIL MEMBER BESSE: Okay, but all, all of those have actual tree save requirements beyond otherwise undevelopable areas?

MR. ERICSON: That would be correct.

COUNCIL MEMBER BESSE: As I said, Mr. Chair, I'll have some questions later, but I don't want to, you know, hog the time.

MR. SIMMONS: If I could respond to that comment also about the differences between other communities. One of the things that's in this ordinance that I think is significant is the Planning Board's attempt, at least to modify or to address the limited tree save provisions between the two ordinances in October and one they promoted, with some very robust tree planting provisions. And I recognize that we've heard a lot that new trees simply don't satisfy the requirements of large or existing trees. By the same token, the, what's in the proposed ordinance with respect to the, the number of trees or the, the variety and size of trees and most specifically and importantly I think, is the tree planting islands that are required for these larger trees to be planted in. There's no ordinance elsewhere in North Carolina that I've seen where the tree planting standards, particularly the tree planting islands are anywhere near as large as these. That would do several things in terms

of not only providing room for the tree to grow and become healthy and reach it's mature canopy size, but also it could work to take that stormwater runoff that is captured by the larger tree canopy in these urban parking lots and so forth, and funnel that into this, this recharge area, where these larger or 625 foot planting islands would be in a way that could, work in a very urbanized environment or parking lot and certainly mitigate a lot of the concerns we see about stormwater runoff both in terms of water quality and water quantity. And I recognize that no new tree is going to do that, but it is significant that these larger planting islands are very substantial in their size.

COUNCIL MEMBER BESSE: Thank you.

COUNCIL MEMBER TERRY: Thank you. Thank you Mr. Chairman and thank you too, and I'll be brief, I'll be brief. Thank you so much. I want to thank the citizens who have participated to bring us to this point. Because this is very important work and I recognize that a lot has gone into it, particularly as it relates to that original version and the latest, October version. And I have tried to educate myself with respect to the tenancies of this ordinance because I realize how important it is. What I really think about each time that I read something, particularly as it relates to some of the questions that my colleague Besse has raised about the staffing and the capacity to enforce, and thinking about that, in terms of current economics, within the community makes me lean toward the latter version, if there is nothing else possible. But personally, I think very, very strongly that there is a need for the original version just based on the comments that I've heard and those are predicated on something that I am currently trying to read and understand called, entitled "Hot, Flat and Crowded: The Earth and the World," by Tom Friedman if you're, that's the book that I, I would recommend our reading, so that we can understand the importance of things like green, it's, it's code green time. And therefore a canopy that allows air quality that is breathable, not only for us but for those who come after us, trees that are, are, are managing to absorb the water that's running downstream and that is going to keep, prevent the kind of erosion that takes place when you're clear cutting acres and acres of land for development. Now, don't misunderstand my understanding or misunderstanding about the need for development because we've got to have it. But I do believe that there is a place somewhere for being able to do that to even (inaudible) build schools, and have fields for children to exercise and recreate on, at the same time that we preserve as much of the green as the earth needs so that we can breathe, and, and have a decent quality of life. Now, do I understand, I recognize that there is probably a need for tweaking some of the formula, formulas related to the size of a three inch versus a six inch in diameter, a mature tree and then the planting of young trees that have to take the forty years to grow. I'm not so sure that we've got enough that, that forty years of growth time really is something that, that we can afford the luxury of waiting for while just kind of clear cutting and using the existing rules regarding the wetlands and, and that which is already in, in the, the ordinance for the proper use of land. The land use planning. And perhaps if we had done better land use planning forty years ago, we wouldn't be at this juncture right now. So, that's just, that's the way I weigh in on this, and thank you Mr. Chairman.

COUNCIL MEMBER CLARK: First off, for folks out there, I don't technically sit on this Committee, but I did want to come today, particularly to hear the tree ordinance. As I was reading this the other night, I just wrote down, and it's a hodge podge of comments, some of them have to do with the ordinance, some of them just have to do with trees because I like trees and just have some thoughts on them. So I'm just going to go down it and some of these are comments and there are some questions along the way. First off, I think we need to recognize this is a very difficult issue

and it's very difficult to quantify in words. There is a reason we've been at this for five years. And that is, you know, how do you define a tree that's worth saving? And, and, for example, I agree with the comment that pine trees shouldn't count. My neighbor's got a pine tree that leans at 40 degrees right over my house. One of these icy days, he's going to be buying me a new roof. But I just think certain trees have different qualities and how do you quantify that in writing, it's tough. I do think we need to address all three issues of tree save, tree maintenance, and tree replacement. I think those are different issues. There seems to be some agreement that the original ordinance, original suggestion was more emphasized on tree save and this one emphasized more tree replacement but I do think all three are important. Next comment, I do think there is a quality to oak trees and I think we ought to start the housekeeping in our own house. The City plants way too many crepe myrtles. If you don't prune a crepe myrtle, you end up with a bush and not a tree. I've got four in my yard and if you don't prune them, they grow out at the bottom. Every time I turn around, the City on Arbor Day is planting crepe myrtles. We've planted them all up and down Stratford Road and near Hanes Mall, we've planted them, I think it's 14th Street where we planted them one time and I think if we're going to set a standard for the community, we should lead the way and I think we should be looking at, at something different. And, I'm not picking on crepe myrtles, I just think they don't make a very attractive tree unless you spend a lot of maintenance time on them. And I realize some of those go under power lines and you have to put a smaller tree, so maybe you put dogwoods or something. Next, I would like a copy of the presentation, I thought it did a good job of comparing the two different ordinances, and I thought that was very helpful. I do think, one thing, in a way I liked about the newer one versus the older one, there are some things I like about the first one better than the second one, but I, I do think there needs to be an emphasis in residential. All the comments seem to be worried about these big clear cutting, but I do think a lot, lot more percent of this town is residential than retail. I do like the idea of two trees, but I do think, for example, we need to address the size of trees that go in yards. I do think some of those things are so small they shouldn't count and I think we ought to outlaw Bradford Pears counting. I've got one in my business and I've got half a tree. The ice took off half of it, it's the ugliest tree in the world, but it's there because somebody planted it. So I do think we need to have an emphasis in residential and I think we need to be sure that the trees are worth counting. I'll come back to large-scale developments in a minute because I do think it's the large-scale developments that I think seems to be the most difficult one. My question, first question is, on property rights. If I owned five acres of land out wherever, do I have a right to cut those trees down?

MR. SIMMONS: It would only be through a development review process that this ordinance would be in effect.

COUNCIL MEMBER CLARK: But if I've got some land out there, I can go cut and cut and sell the timber tomorrow or I can do whatever I want to. Now obviously, if I have built a shopping center and as part of the rezoning I agree to a buffer that it was a zone type four buffer or whatever I have to maintain this, that and the other, but I'm just talking about raw land. I can do kind of what I want to with it. Next comment, I do think we need to address this issue with the schools and the parks and flood plains. Flood plains provide I think valuable areas and by the way my kids played soccer growing up so I'm going to talk about soccer. You've got to have a large flat area, I don't think it contributes to runoff, or to global warming, because you may be cutting down trees, but you're planting grass. Now that may be a tradeoff between which one takes in the most carbon dioxide. But the point being, I do think we've got to have a balance there and I'm not sure what it is, but I do

think, I think the schools have a legitimate concern. How do you treat a soccer field or an outdoor baseball field or something in which, and to me that's a little different than a parking lot. But I do think most of the schools require playground areas. And often times we put City parks beside schools because usually City parks aren't used during school times and they're used afterward, so I think there's something to be said there. The issue and it's already been brought up, but I did have an issue with the GMA areas one and five. I think they need to be addressed, maybe a little bit tighter, but if we don't have any area fives it's probably not something to address there. In closing, I felt like, in looking at the ordinance, there are some things I like and I'm going to call it the new versus the old or the September versus the November or whatever you want to call them. I kind of like some things on both sides of them. I felt like, and you mentioned the comment on the larger areas for where the trees are planted. If you don't have enough area for the water to get to the trees, those trees aren't going to grow as big. Unfortunately the picture you showed of Thruway, I think Thruway has cut down a number of those trees within the last six months to a year. I remember seeing some logs sitting out there, so that may be an issue. To conclude, for what I can gather, from the comments, the biggest area that I see that we're struggling with are these large-scale developments and you had to look no further than Hillcrest where there used to be a golf course and when that thing was clear-cut, for a while it was just orange as far as the eye could see. And I suspect Hanes Mall looked the same way when it was built. But I struggle with, on the one hand if you require, if I had a piece of land where the existing trees were kind of out in the middle, and I had to preserve them, we may be taking away the use, any use of that land. So how do you compensate somebody for the taking of property? At the same time, the reason I ask about, about trees, if I've got ten acres and the school system comes to me and says, listen folks, I'd love to buy your land but you've got all these big trees and we can't use it. Well, I'll sell you the land after I cut the trees down. I mention that in that, I think we need to be realistic. And by the way, we don't build many large-scale developments, but we do build some every now and then. There's no way you can build a Walmart or a Hanes Mall or any of those without pretty much clearing a substantial amount of a lot, or even a large apartment complex. Now, you may not think we need any more Walmart's and I don't shop at Walmart, I don't own stock in them, whether or not you shop there is your own business. But if we want any more, more than very, very small residential development, even a small strip center, you pretty much have to cut most of it down. So if you're going to require a preservation of existing trees, I'm afraid what you're going to get is trees cut down before the land changes hands. In which case, I think if you really are serious about trees, you need to be sure you've got a strong tree replanting because I think you could write any ordinance in the world, but unless you write one that requires everybody in town to get a permit before they cut a tree down, all they're going to do is cut the trees down before they come see us. And I think, I, I don't, it doesn't take a rocket scientist to figure that out. So, and, and I would suggest we, I, if it was me, I think we need to spend some more time talking about these large scale developments I think the other ones tend to go in place. But I think you really need to ask yourself, if I can cut down any tree I want to before I sell the land, what kind of ordinance do I want? Anyway, those are my comments, thank you.

COUNCIL MEMBER JOHNSON: Just two quick observations. One, Mr. Powell, you referenced the Reagan situation in your presentation. If you would also, Reagan and the new Atkins were built at the same time, would you get to Mr. Garrity a copy of the tree planting, tree preservation, whatever maintenance, whatever we did with the Atkins property as it compared to the Reagan situation. And the other, for staff is a concern I have with GMA-1, which is indicated in both drafts

on page 28 and page 103, in that, a relatively mundane question to you, where to me the purpose of having a tree is both for aesthetics as well as physical because of the oxygenation factors involved. My concern is that we're talking about a more densely populated area with less trees. To me, is, is negates, one negates the other.

MR. NORBY: Council Member Johnson, if I could explain that. GMA-1 is essentially the downtown area. And so when you think about any downtown of a city of any significant size, all of the private property with the exception of public parks and plazas and things like that is essentially taken up by buildings and in essence, because you want a very intense development area there. So it's basically all taken up by building all the way up to the street, which you want to encourage pedestrian parking is unfortunately sometimes in surface lots, but often times in decks and all that, so very intense. I think in the downtown area, the thing that makes the most sense regarding trees in a downtown area is to emphasize street trees within the right-of-way in planter areas, like we've done on Fourth Street and all that and to have consistent method of planting street trees which give you that canopy in your most public area, which is the right-of-way. And then also to emphasize your downtown parks as a place where you're going to have green and trees and things like that, as well as the plazas. But were you to go into each site in a downtown area and say, for example, you have a 10% tree save area. First of all, in most downtowns, you're not going to have that left anyway because it's already been developed a long time ago. But even if you did, that basically would be saying to development, we don't want you to do an intense development there, we want you to kind of set aside what we, what little is left of a very small height for, for trees. So that's sort of how we approached it and just as a reminder, the tree committee report even recommended staying out of GMA-1.

COUNCIL MEMBER JOHNSON: If you'll pull the map and highlight GMA-1 because the presentation I was given, indicated GMA, downtown and surrounding areas.

MR. NORBY: You have to squint a lot, but GMA-1 for Winston-Salem is right there, so it essentially includes, as you recall, basically from I believe it's Fourth or Fifth Street up Martin Luther King, Jr. Drive on the east side of 52 and then basically from Martin Luther King, Jr. Drive, Eighth Street down to Business 40 and then over basically to the ballpark area. But it's essentially the gray, it's essentially the downtown area.

COUNCIL MEMBER JOHNSON: And it's those peripheral, those budding neighborhoods that I'm having concerns about because they are, they are included in the GM-1 arena, GMA-1 arena and I think are being compromised by deleting them from the preservation piece. And that's in both versions.

COUNCIL MEMBER BESSE: I have some comments at this point. One is I think Robert's raised a very good point that if you don't have something that covers a situation where property is purchased and cleared and then later developed, then you're, you're essentially opening, opening up the possibility for all sorts of mischief. And that's one of the ways in which I think the October draft, is the one which was based on the tree committee, the community study committee's work after our, our Committee's initial review, is superior to the December draft. That is the one that came out of the Planning Board recommendation and that's in, in the tree preservation section that's on page 103. It does have a four, section four requirements for sites without existing trees so that you know,

you can't, you can't get out of the coverage area requirement, but they're new trees and they're not as, you know, and so, it's not as good. And, I'm, I'm not sure if there is a perfect solution to that. But at least in, in the October version, there was something that tries to deal with that. In, in the December version, I know you've still got your planting requirements, but they're not as strong. They're really not as strong.

MR. SIMMONS: If, let's take the, just for sake of discussion, two sites, or one site the same, and in both the October ordinance and the Planning Board recommended ordinance, if their site has no trees on it, the planting requirements would be the same. In both versions.

COUNCIL MEMBER BESSE: Despite the specific section four requirements for sites without existing trees in the October version? It adds nothing?

MR. SIMMONS: If there is no existing trees, then the planting requirements would be the same in both versions, if I understand your question correctly.

COUNCIL MEMBER BESSE: No, it wasn't a question. And I, I need to go back and cross check that because it doesn't read that way to me.

MR. SIMMONS: Except, actually in the newer version, or the Planning Board's recommended version, it would require large variety trees in all situations whereas in the October version, it would only require large variety trees in parking lots greater than 100 spaces. But as far as if the site has no trees on it, the planting requirements to compensate for the lack of trees would be the same in both versions.

COUNCIL MEMBER BESSE: Well I'd like to have further discussion on that because like I said, it doesn't read that way. You could be right, you've worked longer with it than I have but, I'm not sure about it, about that interpretation. Anyway, in broader brush...

CHAIR MALLOY: Dan, let me say, it's, the Chairman of Public Works has graciously given us five past six. What I'm, I'm thinking that we've heard a lot of comments today from Committee members and citizens. It seems to me that this is such a serious item that I, I would recommend, if the Committee would agree, that we hold this in Committee. Unless you want to absolutely take some action today. I would recommend that we hold it and try to get some of these questions and issues that have been raised here today, looked at a little bit more between the next, now and the next 30 days, and come up with some, I think we know, we really need a strong tree ordinance. We really, really do. I think it's been explained as the reasons as to why I would not want to, in my opinion take this thing to the Council Monday night with so many questions and concerns that have been raised here today and try to come up with something Monday night, I wouldn't want, we're not meeting Monday, but I really wouldn't want to do that. I would rather have it come back to Committee again, in what's that February. Is that...

COUNCIL MEMBER TERRY: I could agree with that and perhaps if we can get, the few questions that are still, because some things have come to my mind that I need to ask of staff before then.

COUNCIL MEMBER LEIGHT: I would think that would be a good idea that we keep talking about

it in February but with some answers to some of the concerns that have been raised from staff and also I think it's obvious, well it's obvious to me that most of us seem to have a preference for the October version and more stringent application of some of this so, I think it would be good if, if staff could bring us some of the, the October version with some of the additional factors. For example, the, the larger tree plant area. I think it's, in parking lots, I think it's great. I'd also like an explanation of the (inaudible) and square footage please, because it seems like a little dogwood tree to have 1,000 square feet or be accorded 1,000 square feet, so...

MR. SIMMONS: Are you speaking, the existing or the new?

COUNCIL MEMBER LEIGHT: New.

MR. SIMMONS: Okay, a dogwood tree would not be allowed in the new ordinance...

COUNCIL MEMBER LEIGHT: Yes, well at any rate, so, that, some of the, that, but at any rate, questions that have been raised if we could get some answers.

COUNCIL MEMBER BESSE: Mr. Chair, you're suggestion is perfectly acceptable to me. I was thinking in terms of either holding it over to February or frankly recommending that we send to public hearing and comment both versions and with the concept that it would come back to this Committee after the hearing for further deliberation. But either approach is, is fine with me. I think that, that all of the parties and individuals that have taken part in the process thus far, the original citizen, multi-party committee, the staff, the Planning Board, everyone has done good faith work and deserves an expression of appreciation. My personal conclusion is that taking the December version without major modification would be the equivalent to rearranging the deck chairs on a sinking ship and that's just not acceptable. But I think that there are good ideas and provisions within the December version that are worthy of further consideration, so holding the whole thing over to February for further work in Committee on the first round is perfectly satisfactory to me.

CHAIR MALLOY: When we come back in February, would we entertain additional comments from the public or will we encourage the public to get those concerns that they have to the staff?

MR. NORBY: I think Council Member Malloy, if I'm remembering back to the sign ordinance, you had a Committee discussion or it was probably, I think it was a Committee of the Whole discussion and the Council, like you did today, and a number of questions, concerns or whatever, the staff took those back and catalogued them and kind of wrote a response back, brought that to you in terms of information for that and then you had further discussion. I think then that went to a public hearing at that point, so, so if I'm understanding you right, what we would do is take the comments, questions, things that need an answer to them, catalogue them, write a narrative response to it and bring it, bring it to you at your next Committee meeting in February. I thought I also heard Council Member Leight talking about maybe a version three that would be a hybrid between the two or did I mishear that?

COUNCIL MEMBER LEIGHT: Just really not so much a version three, but trying to balance some of the things from the later version, the December version that, that could be incorporated into the earlier version, some of the things that, the good points.

COUNCIL MEMBER CLARK: Mr. Chairman, if I might suggest and I like your analogy to the sign ordinance, I would welcome a Committee of the Whole meeting. I think this is important enough and it's complicated enough. Because what I'm going to do, I'm going to take the presentation and when you all were doing it, I kind of like this point, I like that point, I kind of went down the page and I would like to, and I will quantify that with ink at some point, but I think a Committee of the Whole meeting might be worthwhile because this is complicated.

CHAIR MALLOY: Versus bringing it back to this Committee?

COUNCIL MEMBER BESSE: I'd just, I'd be reluctant to refer it directly from this point to the Committee of the Whole, I mean, it might be worthwhile having a Committee of the Whole review prior to...

COUNCIL MEMBER CLARK: Just some time.

CHAIR MALLOY: Okay, that's good. Alright then, so we'll, we'll do that. We'll bring this item back to us in February meeting.

G-2. ORDINANCE PROPOSED BY CITY-COUNTY PLANNING BOARD STAFF AMENDING CHAPTER B OF THE UNIFIED DEVELOPMENT ORDINANCES TO MODIFY THE NCO NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT - UDO-171. *[Recommended by Planning Board.]*

By Consensus, the Committee agreed to hold this item until the February 10 meeting.

Mrs. Angela I. Carmon, City Attorney, stated that the resolution for Item C-1 had been revised and should reference General Statute 160A-460 in the last paragraph.

Council Member Terry made a motion to approve the amended item. The motion was duly seconded by Council Member Besse and carried unanimously.

ADJOURNMENT: 6:12 p.m.