

**Minutes of the Meeting of the Legal Committee of Council  
Held in the Council Chambers of the Municipal Building  
On Monday, August 9, 2021, at 6:30 P.M**

Committee Members Present:

Chairman, Ward 2 Councilman Dennis McBride  
Ward 1 Councilman Bob Butkowski; Councilman-at-Large Brian Fischer

Others in Attendance:

Councilman-at-Large Craig Witherspoon; Ward 4 Councilman Scott Radcliffe; Ward 3 Councilman Tony Moore; Law Director John Gasior; Councilwoman-at-Large Tammy Holtzmeier; Clerk of Council Barbara Brooks; Service Director Mike Farmer; Safety Director Duane Streater; Mayor Bryan Jensen; Kevin Martin, Morning Journal; Dylan Reynolds, Chronicle Telegram; Molly Heideman, West Life; Rick Varga, Arborist; Residents Matt Smith, Pat Jankowski, Mary Berges and Jennifer Demaline; Rocky River Resident Stephanie Allen; Planning/Economic Development Coordinator Pam Fechter; City Engineer Ryan Cummins

**Discussion of Becoming a Tree City**

Mr. McBride stated that there is a lot that we need to do under our tree ordinances but tonight they were going to deal only with becoming a Tree City USA and he invited Rick Varga, Arborist, to come forward with the information.

Mr. Varga stated that on page 2 of his handout, they would see the qualifications and standards for Tree City USA status: 1). A tree ordinance is required as part of the procedure. Bay Village, Avon Lake, Fairview Park, N. Olmsted, and Westlake are all Tree City USAs and they all have their ordinances in place already. He said he has researched all of their ordinances and so we can incorporate a lot of what they are doing into our ordinance also. Right now the only thing that we have for a tree ordinance in Avon is for trimming in the right of way and that is about it. So what we want to do with our ordinance is to encompass tree species that are allowed to be planted and those that are prohibited in certain areas. Along with that, we are also going to include in the ordinance the preservation of trees, to make some type of specification that builders cannot just come in and take down every single tree. There are probably 15 different things to include in the tree ordinance besides preservation and the planting of trees. So we are going to put that all together so we have a good plan in the City of Avon for now and into the future. 2.) The next qualification is that we have to have a forester or an arborist and a Tree Commission or a Board of five people. 3.) The third aspect of this is that we need to spend \$2.00 per capita on trees, but that encompasses not only the planting of trees but also the removal of trees. Mr. Varga said he knows that the City has already spent tens of thousands of dollars removing trees that were bad out of right of ways and another part of it is cleaning up brush, etc. So for us to meet that recommendation, that has already been done so we do not have to worry about that particular aspect. 4.) The 4<sup>th</sup> thing that we need is just to have an Arbor Day. Avon has to proclaim an Arbor Day and have public participation on that day. We could get a speaker if we wanted and perhaps have a tree planting; we can show everybody the interest in trying to plant trees in our City.

Mr. Varga stated if we do become a Tree City, there are grants available through the Arbor Foundation to be used whichever way we want as long as we are utilizing it for trees.

Mr. Butkowski thanked Mr. Varga for the time and effort that he has put forth with this. He said that Tony Moore has been the catalyst for this whole discussion but he knows that Mr. Moore and Mr. Varga have

had meetings and discussions as well as doing the prework for this and he appreciates that. He said that he had some questions regarding the four qualifications. Would the prohibition of certain trees be on right of ways or on people's personal property? Mr. Varga said that we would specify where certain trees are allowed in accordance to the species. So there would be certain trees that we could incorporate in right of ways, certain trees that would be better for areas where they are going to get larger, etc. He said that he has been working with Tom Demaline of Willow Nursery and they put together a list of tree species. Mr. Butkowski asked if that prohibited list would impact people's personal property? If there is a tree on that prohibited list, could a resident plant one of those trees on their personal property? Mr. Varga responded, no, not according to our tree ordinance. Once the ordinance is in place, there is going to be a section that is for fines if somebody does not abide by the ordinance. In other words, we do not want people to be planting large willow trees next to houses or by sewer lines. You can plant willow trees but if you do not plant them in the right spot, they can be a problem, and that is why we need this ordinance.

Mr. Butkowski said he was just thinking that the general public is not very familiar with tree species so they plant a tree and then suddenly somebody is knocking on the door telling them that tree is on the prohibited list and they have to take it down and then it becomes a legal issue. He does not know if we have the history where it has been challenged about whether or not we have the authority to tell somebody whether they can or cannot put a tree on their personal property and he wants to have that discussion now as opposed to later when somebody is coming back and saying you cannot do this or you cannot do that.

Mr. Varga said that is a very good point. But in Bay Village, for instance, with their tree ordinance, they have specifics that you are not allowed to plant certain trees on your property and the arborist for Bay Village has not told him that they have had problems with this. They have it in their ordinance that there are species of trees that are definitely prohibited.

Mr. McBride stated that the issue is to eliminate invasive species. Mr. Varga said that Mr. McBride is correct; we have to be aware of some of these invasive species that just take over. The whole aspect of this is for the City infrastructure also – the sewer lines, drainage, swales, etc. We have to take all of that into consideration and that is what we are trying to do: to educate the public so it does not cause us more problems down the road by planting certain trees.

Mr. Moore thanked Mr. Varga for coming in and asked him if he could provide Council with the list of trees that he mentioned as it would be helpful for educating. He said he thought that trees are very important to our community, trying to save what we can and do what is right. Mr. Varga, yes, we have a list already but we are going to tweak it a little bit so that it is more specific for individuals as far as tree lawns and other areas.

Mr. Radcliffe noted, so this list of prohibited trees is not meant to deal with trees that people currently have but as those trees age out they would be replaced with something that is different and better. The job of the Tree Commission is not to go and start scouting around and finding prohibited trees and asking people to remove them. Mr. Varga said, no, absolutely not. We want to try to educate everybody, and have them communicate with us to ask about trees and then we can advise them of the pros and cons of the species of trees that they have. It is all part of the program of Tree City USA to educate people and help them so a tree does not fall on their house five years from now because they were not aware.

Mayor Jensen asked Law Director John Gasior if we had this tree ordinance in place and let's say two residents had an issue (as we did with the willow tree that was planted in a location that was causing drainage problems), would that help in a civil matter over the City having to step in? A lot of times the City does not want to be the policing mechanism behind a problem but if somebody did plant a tree that was prohibited in that ordinance, could that help in a civil matter? Mr. Gasior responded that he was looking at the sample ordinance that Mr. Varga provided and that specific issue is not addressed but if the tree was diseased or rotting, then it could be reported to the Tree Commission and then the resident would be asked to remove the tree. If they did not, then we could come in, take care of it, bill them, and if they refused to pay then we could put it on the tax duplicate. But your question is really about removing a healthy tree that is part of the prohibited tree list and there is nothing in this sample ordinance that covers that. That is something that we would have to decide as a City Council whether you would want to go down that road of actually removing one of these healthy but prohibited trees. Mr. McBride said not necessarily a willow, but a tree that gets into a sewer line and is clogging a common drainage easement. He thought that tree would fall into kind of a nuisance category and then we could go after it although we would need something in the tree ordinance.

Mr. Gasior stated he thought the Mayor was referring to something that took place six or seven years ago where we did have trees growing in what appeared to be when we looked at the plat, a City storm sewer along the rear yard line of some homes off from French Creek Road. We addressed that because we had an easement there. And so the City was able to exert some authority over the tree regardless of whether it was healthy or not because it was in the storm sewer easement, but we are not always going to have that situation and we are going to have to address those types of issues because what he was looking at in the sample ordinance, was just the diseased or dead tree. We have had a few calls on those where we have had a storm come through and then the neighbor is calling up and saying his neighbor's tree was hit by wind or lightning and was now in his backyard and asking who has to remove it. And insurance companies deal with those issues. But those are situations where we would try to avoid having that happen by the neighbor reporting probably to this Tree Commission that his neighbor's tree is dying and decayed and it is just going to take one good storm to knock it down and damage his property. Can you do something? And then Mr. Gasior thought it would probably operate similarly to our Enforcement Committee under the Building Code where we can address housing that has gone south and falls into disrepair and we can approach the owners and try to get some repairs done or have the house demolished.

Mr. Witherspoon asked how being a Tree City affects a builder that comes into town. Unfortunately what they sometimes do is come in and just strip the land and take all the trees out so they can build houses. Being a Tree City, is there something that can be done with developers that would keep us out of court? Mr. Varga said that the Bay Village tree ordinance made reference to that specifically – where we have to go out and identify the trees to make sure that there are healthy trees that we can preserve. We are not going to go out to the building lots and say the developer cannot take any trees down; no, we would say to take trees down within reason so there is some type of buffer. What we want is some type of buffer zone and we try to keep the best trees instead of them just clearing the lot. But that is part of the tree ordinance where you are trying to incorporate coverage of all these different aspects.

Mr. Radcliffe asked if the tree ordinances of other cities cover residential properties as well as commercial? Mr. Varga answered, yes, they cover residential and commercial. Mr. Varga said what we are going to try to do in the City of Avon is to write the tree ordinance in accordance to what we think is the best thing for the City of Avon. We have all these templates from other cities that we can work with

to try to get an idea of what we need to accomplish as a Tree City. The Tree Commission will develop this tree ordinance and then present it.

Mr. Fischer thanked Mr. Varga for coming in and also thanked Mr. Moore for keeping this issue in the forefront. He asked when we would become a Tree City if we meet all the qualifications, assuming that Council is on board. Mr. Varga said that the application starts in September; they take the applications in September, October, and November so we can become a Tree City in January. Mr. Fischer asked, even though we would not have celebrated Arbor Day this year? Mr. Varga answered, yes, as long as you have an Arbor Day on the books.

Mr. Gasior noted that Mr. Witherspoon mentioned staying out of court and what Mr. Gasior would like to see is to establish the Tree Commission initially and have the Commission spend some time studying a tree ordinance and maybe even hold a couple of public hearings to get input from the public and then finally come forward with a piece of legislation that Council could then also consider in debate. Ultimately then, when that piece of legislation passes, there is some thought behind it, there is some study behind it, and what they can say in the law is that there appears to be a legitimate governmental interest in passing a piece of legislation like that because it will have impact on private property and perhaps the value of private property. It is not that the City government cannot regulate. You have to regulate for the public good and to understand what that public good is, it is always good to have a Commission hold hearings to try to determine just exactly how far we need to go to achieve the public good in our community. So he thought that we should not be running to get a piece of legislation on the books. We have plenty of examples that the Commission could look at and to pick and choose from various cities which sections of their ordinances look like they apply most to our community. And then be in a position a few months down the road to pass a piece of legislation that has a lot of thought behind it. Also, that has a better chance of holding up in court if you get challenged.

Mr. Varga stated that in his conversations with the arborists of other cities, they have indicated they have had no problems. Mr. Gasior said if it is done right, it can enhance the value of property in the City. Mr. Varga said that is absolutely correct. We need to work together; we have a good start already as we have researched all the things from the other cities but we need to put it together for the City of Avon.

Mr. Butkowski stated that Avon has a lot more area to be developed than say, Bay Village, and we have had plenty of experience with different developers at different levels of aggressiveness, so he thought that the personal property issue is a key point for this ordinance. He said that there have been situations where the developer left that buffer zone that then caused other problems due to drainage issues. So are there ways to maintain that tree canopy without pushing it all the way to the edge of the property? Mr. Varga said we need to take that into consideration when we do the ordinance, saying there are going to be situations where we are going to run into that particular scenario. When we put the ordinance together obviously he would communicate with the City Engineer for advice about these certain scenarios.

Mr. Gasior stated that we probably can tie this particular legislation to our Planning and Zoning Code and then any development has to go before Planning Commission and there will probably be some synergy between the Planning and Zoning Code and this Tree City legislation so that issues like that can be addressed and Planning Commission may be able to grant waivers or whatever.

Ms. Fechter asked, from Planning Commission, if a lot of thought could be put into the addition of trees and not put all of our thought into the removal of trees. There are some situations and some job sites where it is much better to have a clean slate, so if we let them have that clean slate, what do we do to try

to balance that by making them add trees? Mr. Varga responded, that is one of the things that is going to be in the ordinance because there are certain trees that have a certain amount of canopy and we are going to make sure that they plant the right trees, and that is one of the areas where we will advise also. If a developer is going to clear the trees, we want to make sure that they are going to incorporate trees that have a specific canopy so 10 years from now, we are going to develop that canopy which will be in accordance with Tree City USA.

Mr. Cummins stated that some of the issues that have been discussed tonight are very critical issues and will take a good amount of consideration to come to a spot that is workable for the development community and also for the residents who live in those developments afterwards. So we need a staged approach to this and something with a lot of consideration as the Law Director talked about would be very wise.

Mr. Moore asked about the grants – when can you apply for a grant and if you receive a grant, how long do you have to hold or spend that grant? Mr. Varga said that there is a multitude of different types of grants that are available and once you become a Tree City USA you can apply for specific grants.

Mrs. Holtzmeier stated that it seems as though further study, whether it is for changing the Planning and Zoning Code or for a specific ordinance, is something that has merit but she does not know yet that that ultimately means that all arrows point to having that Tree City designation. She noted that in Mr. Varga's handout, the first qualification for becoming a Tree City is that the tree ordinance should state that the trees on the City right of way and City property are the property of the City and the City cares for them. So is that a requirement to be part of a Tree City and how does that change how people handle the trees on their tree lawn?

Mr. Varga said that if you look at the tree ordinances, for instance the one from Bay Village, it details those specific items and so in our tree ordinance everything is going to be identified specifically. Mrs. Holtzmeier asked, but to be a Tree City USA do we have to acknowledge that trees on the tree lawn are City property and the City cares for them? Mr. Varga said we just have to acknowledge what we do care for and we are going to make that specific when we do the ordinance. When we apply for a Tree City status, we will let them know that is part of it but also we are going to have the complete plan going forward and how we are going to meet all their recommendations. We are going to show them how specific we are in detailing everything in the tree canopy and tree species. Mrs. Holtzmeier stated that we want to be cautious about what new responsibilities the City would have and take away from the property owner. Mrs. Holtzmeier then asked about the grant money. She noted that some of the examples in the handout are Cuyahoga County-specific and she was interested in learning how the Arbor Day Foundation distributes those grant monies locally. She did not see any reference to how that money is distributed in Lorain County and she was interested in what Lorain County cities receive and how that is distributed through our local organizations. Mr. Varga said that there are quite a few grants where just the State is involved. Mrs. Holtzmeier asked, Ohio Department of Natural Resources? Mr. Varga said, yes, and others like that so there are a lot of different avenues that we can research for grants.

Mr. McBride stated that it sounds like we have a fair amount of homework to do. He said that if there are no more questions, he wanted to adjourn this meeting as Council has Public Hearings that start at 7:15 P.M. He thanked Mr. Varga and said that he had been a great help. There is a lot of work ahead to draft an ordinance. Mr. Radcliffe asked if a Tree Commission would be put together to start this process and Mr. Gasior said he thought that would be the appropriate way to go. With Mr. Varga's help, he could

write an ordinance to create the Commission and then once that passes, Council can then fill the positions and then they can get started.

Mr. Moore asked Mr. McBride if there was an official recommendation from the Legal Committee tonight and Mr. McBride said, no, he thought there is more homework to be done and they would have another Legal Committee meeting and perhaps combine it with the Service Committee.

Mr. McBride adjourned the meeting at 7:12 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council