

**Minutes of the Meeting of the Avon Tree Commission
Held in the Council Chambers of the Municipal Building
On Monday, October 25, 2021
At 6:30 P.M.**

The Chairman, Ward 3 Councilman Anthony Moore, called the meeting to order.

PRESENT:

Commission Members: Mary Berges; Shannon Laurenzi; Greg Mateyka; Anthony Moore, Chairman; John Schwartz; Matt Smith; John Traxler; Certified Arborist Richard Varga (Non-Voting Member)

Law Director- John Gasior; Clerk of Council – Barbara Brooks

Others in attendance: Planning and Economic Development Coordinator – Pam Fechter; City Engineer – Ryan Cummins; Safety Director – Duane Streator

OATH OF OFFICE – Greg Mateyka

Mr. Gasior stated that, for the record, prior to this meeting, Greg Mateyka was sworn in as a member of the Avon Tree Commission.

MINUTES OF THE ORGANIZATIONAL MEETING OF THE AVON TREE COMMISSION HELD MONDAY, OCTOBER 18, 2021

A motion was made by Ms. Berges and seconded by Mr. Moore to dispense with the reading of the minutes of the Organizational Meeting of the Avon Tree Commission held Monday, October 18, 2021, and to approve said minutes as published, and the vote was: Ms. Laurenzi, “yes”; Mr. Mateyka, “yes”; Mr. Moore, “yes”; Mr. Schwartz, “yes”; Mr. Smith, “yes”; Mr. Traxler, “yes”; Ms. Berges, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

NOMINATIONS FOR A RECORDING SECRETARY FOR THE AVON TREE COMMISSION

Mr. Gasior noted that this is just a formality that the nomination should go to Clerk of Council Barbara Brooks. He stated that the Tree Commission, however, may want to designate someone to just start the recorder and turn it off when Ms. Brooks is not able to be at the meeting. He said that he thought that Matt Smith does that presently for the Landmarks Preservation Commission meetings. Mr. Smith said, yes, he starts the recording every time. Mr. Gasior said, so somebody should nominate Barbara Brooks as Recording Secretary and then we will go from there.

A nomination was made by Mr. Moore that Clerk of Council Barbara Brooks be named as Recording Secretary. Mr. Gasior stated that that being the only nomination, the Commission could make it unanimous. But he also thought that the Commission should nominate Matt Smith to be Acting Recording Secretary to be in charge of turning on the recorder and turning it off on those nights when Ms. Brooks would not be able to attend the meeting.

A nomination was made by Mr. Schwartz that Matt Smith be named as Acting Recording Secretary. Mr. Gasior stated that if there were no other nominations, the Commission could make it a unanimous vote for Mr. Smith.

DISCUSSION OF RULES OF ORDER FOR THE AVON TREE COMMISSION

Mr. Gasior stated that he thought that Ms. Brooks had sent the rules to everybody. He said that these are the type of rules that Planning Commission and Landmarks Preservation Commission have. He noted that the rules are fairly straightforward but he would go through them.

Mr. Gasior said that Section 1 of the rules states the way that the officers of the Avon Tree Commission are elected and at the last meeting of the Commission, the Chairman and Vice Chairman were selected and tonight the Secretary was named. He said that he did put in the rules that the Clerk of Council or her designee shall act as the Commission's Secretary. He added that if she cannot make the meeting she will designate Mr. Smith to take care of the recording device.

Mr. Gasior stated that Section 2 deals with voting and each member is entitled to one vote. A minimum of four votes is required to pass anything. There are eight members of the Commission but one member, the Certified Arborist, is not a voting member so you have to have four affirmative votes to pass any type of recommendations to Council. If a member abstains, the vote is not counted. As we do in Council, we will call for a vote in alphabetical order and the Chairman will vote last. The vote will rotate, meaning that if Ms. Berges starts the first vote on the first item, the next member, in alphabetical order, will start the vote on the second item. The vote rotates until it comes back around.

Mr. Gasior stated Section 3 requires setting a date and time for meetings and he chose the second Wednesday of each month at 7:30 P.M. if that is good with everyone. The Landmarks Preservation Commission meets on that date at 7:00 P.M. but Matt Smith, the Chairman of the LPC, did not anticipate that that the LPC meetings would normally go longer than half an hour.

Mr. Gasior said that the next item in Section 3 states that four members constitutes a quorum for the meeting; they conduct business. He stated that he should insert there that four **voting** members constitute the quorum and he will make a note to add that because we could have only three voting members present and the Arborist which would indicate that you have four members to constitute a quorum but you really could not conduct any business because the Arborist does not have a vote.

Mr. Gasior then reviewed other parts of Section 3. He listed the order of business on the agendas and talked about how Special Meetings are called, and how rules applied to proceedings at any meetings of the Commission.

Mr. Gasior said that Section 4 deals with agendas. He stated that the agenda items for inclusion in the Commission's Regular Meeting agenda shall be submitted on, or attached to an application form prescribed by the Commission, or submitted directly to the Chairman by the end of the business day 10 days before the date of the Regular Meeting. It is always at the Chairman's discretion to allow something to be submitted but 24 hours is really the deadline because you need to have the Secretary notify the newspapers of what is on the agenda and 24 hour notice is minimum for the public. Your Regular Meeting agendas are probably going to be provided by email just as it was for this meeting tonight. Additional items can be added. There can be additions and deletions to the agenda; subjects may be heard and acted upon as the Chairman deems appropriate.

Mr. Gasior stated that Section 5 regards action items. The rule will be that items will be presented at that first meeting and then voted on at the next Regular Meeting. If anyone has been to a Council meeting and has heard Council say, "motion to suspend the rules and act", that is what they are referring to because Council has a similar rule that requires three readings of legislation. The Charter spells out what types of legislation must go three readings but all other legislation can be passed by emergency and the emergency means we are going to suspend the rule that requires three readings. In this case, if there is going to be a motion to suspend the rules, it is going to be to suspend the rule that requires you to just discuss the matter at your first meeting where it is presented and not vote on it until the second time it is presented. So you will have the option to suspend that rule and act at that first meeting.

Mr. Gasior continued with Section 5 by saying, all agenda subjects coming before the Commission except those referred to the Tree Commission by City Council and Mayor, shall be accompanied by the applicant or a bonafide representative. So, for example, if we have a tree contractor coming in that wants to make some sort of a recommendation to Council, then they should come in and make that recommendation themselves and that is pretty much all that that rule is saying. In subsection C of Section 5, it states that all agenda subjects shall be properly documented and be retained as part of the permanent record and it lists the documents to be included. Subsection D notes that a budget shall be submitted to the Tree Commission for review and approval prior to submission to City Council.

Mr. Gasior stated that Section 6 deals with agreements and he said that all agreements with developers, etc. would be reduced to writing and signed by the City and the party. Before approval by the Tree Commission of any tree permit or tree removal permit, there would be completed and in place with the City, a liability policy and appropriate bonding. Mr. Gasior said that we are jumping ahead here because he was not sure just exactly how far the Tree Commission is going to go because we have not even adopted ordinances to give them that type of authority. That is something that we are going to be discussing as another item on the agenda tonight and that is legislation that this body is going to need to recommend to City Council and that City Council will have to pass in order to try to achieve this status as a Tree City USA. The insurance provision, Section 7, is also sort of on the premature side because once again, he was not sure exactly how the Commission is going to operate. But we put these provisions in there as place holders.

Mr. Gasior stated that Section 8 deals with the minutes and how they are going to be handled. Ms. Brooks is very familiar with that and how the motions are made, etc. For Section 9, Review Process, he was not sure what types of applications are going to be coming before the Commission until we have delved into the ordinances that Council will pass eventually to give the Tree Commission its powers, but we have a review process in place. In Section 10, Committees, Mr. Gasior stated that committees could be appointed by the Chairman. Perhaps it might be his desire to break down into smaller committees to get certain projects accomplished. Once again, we go back to the all-important pieces of legislation that this body will recommend to Council and then Council will ultimately adopt to give this body the authority. As you know right now, the only thing that Council has done to this point is to create this Commission. If you adopt these rules tonight, you can amend them from time to time but he thinks that the important things are in here and it is a boilerplate set of rules to get us started.

Ms. Berges questioned Section 2 A, voting. It says that each member of the Commission shall be entitled to one vote. She asked if we wanted to add, "with the exception of the Arborist"? Mr. Gasior said, yes, or we could say that each voting member of the Commission shall be entitled to one vote because the Ordinance that created the Tree Commission specifically excluded the Arborist from having a vote so there

is already legislation in place that prevents the Arborist from voting but we are going to note that, and make the change in the rules, so that is clear.

A motion was made by Ms. Berges and seconded by Mr. Moore to suspend the rules and act, and the vote was: Mr. Mateyka, “yes”; Mr. Schwartz, “yes”; Mr. Smith, “yes”; Mr. Traxler, “yes”; Ms. Berges, “yes”; Ms. Laurenzi, “yes”; Mr. Moore, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Ms. Berges and seconded by Mr. Moore to adopt the Rules of Order for the Avon Tree Commission, and the vote was: Mr. Schwartz, “yes”; Mr. Smith, “yes”; Mr. Traxler, “yes”; Ms. Berges, “yes”; Ms. Laurenzi, “yes”; Mr. Mateyka, “yes”; Mr. Moore, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

DISCUSSION OF ESTABLISHING TREE LEGISLATION FOR THE CITY OF AVON

Mr. Gasior stated that he passed out a document that came to him through Mr. Varga and he believes this is like the bare minimum that would be required for a tree ordinance. He said that he knows that through Ms. Brooks, all of them had received ordinances from various surrounding communities. He thought that what they are going to have to do is to analyze those ordinances and he has a format that he will hand out for them to look at between now and the next meeting. He said that he wanted to emphasize that there is a lot going on with a tree commission and a tree ordinance and as a lawyer, the first thing that crosses his mind is that it is a regulation of property. And anytime a legislative, governmental body embarks upon regulating private property his radar goes off and he becomes very concerned about the 5th Amendment to the Bill of Rights, which is the right to own property free and clear of any governmental intrusion. So we have to tread very carefully with what we impose upon a private property owner with regard to trees. Now, what we impose upon the City is fine; what we want the City to plant in the right-of-way, what we want a private owner to leave in the right-of-way or plant in the right-of-way is fine. We can even control a tree on private property that extends into the right-of-way and may cause a traffic obstruction. For instance, if somebody’s tree is obstructing the view of a stop sign, we have to be able to deal with that situation.

Mr. Gasior said, so he just wanted them to read these ordinances from all these cities and always think in terms of regulation – are we overstepping our bounds in regulating private property in a way that could become objectionable to the property owner and could wind up in court? He then said that he wanted to touch upon a few things. For instance, the ordinances specifically mention the spacing of street trees. When he sees the words, “street trees”, he is thinking public trees, trees that are in the right-of-way. And he is not seeing a problem with this. This is governing public trees – distances from curb and sidewalk. He is not concerned about this because these are clearly areas that are within the public right-of-way. If you stand on the sidewalk in front of your house and you are looking at your house, if you take your foot towards your house and draw an imaginary line from there to the center line of the street, that is your public right-of-way. So anything at your back, so to speak, is in the public right-of-way. Now you do have a responsibility to maintain the sidewalk and we generally require people to maintain the tree lawn but those are public property; they are in the public right-of-way. We require developers to plant one tree per subplot and we usually require that tree to be planted in the tree lawn in front of the house. And there is not a problem with that because that is in the public right-of-way. If we go beyond that and begin to

tell folks that they need to plant trees in their yard, he would withhold comment on that for now but he just wanted them to know that is one of those situations where we could be crossing that regulatory line.

Mr. Gasior referred to the statement concerning removal of stumps of park trees and again, this concerns public trees and there is no problem with that. He said that he thought that ultimately we are going to have an ordinance that is going to make recommendations about what types of trees should be planted on tree lawns and in right-of-ways and what types of trees are prohibited, and that is all fine.

Mr. Gasior noted that we are going to have our arborist to guide us at times and to guide the City and creating an arborist position will be a part of the tree ordinances that we are going to have to adopt. We need to establish that position so that we officially have a certified arborist on board or we are not going to be able to become a Tree City. There will be some licensing and bonding and Council may deal with some other requirements for the arborist to have.

Mr. Gasior said that he would turn the discussion over to Mr. Varga to talk about some of the sample ordinances. He knows that we have ordinances from Avon Lake, Westlake, and Olmsted Falls. Mr. Gasior said that he has reviewed them all and they are all very good but they are all slightly different from one another and then when you superimpose all of that on top of what Avon currently has, which is in Chapter 1028, you see that there is quite a bit of work to be done. If our meeting is going to be the second Wednesday of November, we are going to have to make that recommendation on our piece of legislation that we want Council to adopt. So if the Tree Commission meets on November 10th, we will make that recommendation of the meeting date on the legislation and then he will be able to get that legislation on Council's Work Session on November 15th and hopefully, Council will pass it at their Regular Meeting on November 22nd. He believed that Mr. Varga will then have everything that he needs to submit the application to the proper party to request the designation as a Tree City.

Mr. Varga stated that what we want to accomplish with our tree ordinance for the City is to make it an educational and advisory tree ordinance. In other words, we are not going to try to make people plant certain trees in their yards or remove trees; we are going to make the recommendations to everybody that this is what we think the proper tree is. We have already put together a tree list and included that in the ordinances. He said that in Avon Lake, you need a permit to plant a tree in your yard and he thought that we are going to stay away from permits right now. In Bay Village, Westlake, and Rocky River, their legislation states that if you do not abide by the tree ordinance, you are subject to a fine up to \$1,000 and again, we are not going to approach that particular aspect of getting people regulated to that extent.

Mr. Varga said that he has been working with Tom Demaline of Willoway Nursery, with other cities, with the State Arborist, and the State Urban Forester and they have put together a diversified tree list. The list explains the trees as far as their height, the flowers they may produce, their foliage, etc. so there is a detailed, specific list. We are going to make sure that we have all of the scientific nomenclature along with the common names of the trees, so there will not be any confusion.

Mr. Varga said that, for our application, we have to create an Arbor Day and we are looking at that. Once we get that all established, we can make our application to be a Tree City USA and then that opens our doorway to have grants and to purchase trees through the State of Ohio Urban Forestry Dept. for our parks and just enhance the City overall. One other aspect that we want to try to establish in our ordinance concerns developers and that is to have a tree protection and maintenance plan within our ordinance so if there are trees that can be saved, we want to try and save them. And we just want to work with the developers; we are not going to go in there and tell the developer what he has to do. We want to work

with them and say, if you can save this tree, this is how to do it, this is how to protect it and this is how we are going to maintain it. Just as an example, when they did the project on Detroit Road right by Shakespeare, they took down every single tree and as a consequence, a dozen trees blew over in Shakespeare Development because they completely eliminated all the trees and left a wind tunnel open. So that is one of the many things he could reference as far as why a tree ordinance is going to be important.

Mr. Gasior added that he was going to work with Mr. Varga over the next week or so to try to get an ordinance pared down to where it is 99% ready to go. He would then get it to the Tree Commission in advance of their next meeting on November 10th. If there are any questions or comments we can access one another by email or telephone and then come to the meeting on the 10th and be prepared to act on a piece of legislation that he thought that everybody can live with, at least at this point in time, and then we can move forward with this Tree City designation. Subsequently, there will be time to address some of the issues that you feel might have been left out but we can always talk about those in the next meetings and go from there.

Ms. Berges noted that Chapter 1028 in our Code talks about trees and it does have a penalty in there but there is also a Chapter for the developers, Chapter 1248, and she asked how we go about incorporating what is already in the Code? Mr. Gasior said that he looked at some of the Sections and he does not think that we are going to be adopting anything that would be contradicting anything. His goal is to create a new Chapter 1028 so the existing 1028 that you see in front of you now would be repealed and a new Chapter 1028 will be adopted. And then, if there are any contradictions in the Planning and Zoning Code, we will address them hopefully in this same week. But as he said, he does not see any contradictions right now by way of this new Chapter 1028 that we are going to bring forth and recommend that Council adopts.

ESTABLISHING ARBOR DAY IN THE CITY OF AVON

Ms. Brooks read the recommendation for establishing Arbor Day, as follows: "The Avon Tree Commission is recommending to Council approval of establishing Arbor Day in the City of Avon as the first Saturday in November of each year beginning in 2021, and to ask the Mayor, City Council and the residents of the City of Avon to observe this day with the appropriate ceremonies and activities in the City of Avon."

Mr. Schwartz stated that most folks celebrate Arbor Day and Earth Day in April, and Ohio's Arbor Day is in April. He just wanted to make sure of our November date because we are trying to be educational and advisory; folks that know trees know that the fall is the best time to plant. Mr. Varga agreed that fall is the time to plant trees and that is why we chose Arbor Day for the fall.

Mr. Moore asked the Commission if they wanted to stay with the November date or if they wanted to consider April and it was agreed to keep the November date.

Mr. Varga said that it will be our own entity and he was sure we are going to get people to sponsor Arbor Day. Mr. Mateyka stated that he was with Site One Landscape Supply and he would have to talk to his upper management but he felt they would love to sponsor something with the City, maybe a Saturday or a Sunday and have games and activities and have little trees that the kids could plant, etc.

A motion was made by Mr. Smith and seconded by Mr. Schwartz to suspend the rules and act, and the vote was: Mr. Smith, "yes"; Mr. Traxler, "yes"; Ms. Berges, "yes"; Ms. Laurenzi, "yes"; Mr. Mateyka, "yes"; Mr. Schwartz, "yes"; Mr. Moore, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Ms. Berges and seconded by Mr. Moore to approve the recommendation to Council Establishing Arbor Day, and the vote was: Mr. Traxler, "yes"; Ms. Berges, "yes"; Ms. Laurenzi, "yes"; Mr. Mateyka, "yes"; Mr. Schwartz, "yes"; Mr. Smith, "yes"; Mr. Moore, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

SETTING A FIXED DATE AND TIME FOR THE MEETINGS OF THE AVON TREE COMMISSION

A motion was made by Mr. Smith and seconded by Mr. Schwartz to suspend the rules and act, and the vote was: Ms. Berges, "yes"; Ms. Laurenzi, "yes"; Mr. Mateyka, "yes"; Mr. Schwartz, "yes"; Mr. Smith, "yes"; Mr. Traxler, "yes"; Mr. Moore, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. Smith and seconded by Ms. Laurenzi to adopt establishing the second Wednesday of each month at 7:30 P.M. as the fixed date and time of the Regular Meeting of the Avon Tree Commission, and the vote was: Ms. Laurenzi, "yes"; Mr. Mateyka, "yes"; Mr. Schwartz, "yes"; Mr. Smith, "yes"; Mr. Traxler, "yes"; Ms. Berges, "yes"; Mr. Moore, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

ADJOURN 7:19 p.m.

A motion was made by Mr. Smith and seconded by Mr. Schwartz to adjourn the meeting of the Avon Tree Commission, and the vote was: Mr. Mateyka, "yes"; Mr. Schwartz, "yes"; Mr. Smith, "yes"; Mr. Traxler, "yes"; Ms. Berges, "yes"; Ms. Laurenzi, "yes"; Mr. Moore, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.