



## FROM THE OFFICE OF THE CITY MANAGER

February 22, 2016

To: Mayor and City Council Members

From: Brian Kischnick, City Manager

Subject: City Council Member Questions and Responses

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I have discussed questions advanced by Mayor and Council with Staff, and responses are attached. Thank you for asking questions in advance of the meeting.

**Subject: N-01 RECONSIDERATION OF ZOTA 248 - WOODLAND PROTECTION**

### **Questions from Council Member Dave Henderson:**

- a. I am curious why this reconsideration of the woodland ordinance isn't required to have a public hearing, just as the original woodland ordinance that was voted down was required to have. Please advise.

### **Response:**

- If the matter is a City Council referral, Rule #11 and Rule #6A and Rule #25 allow for a vote on the item, as long as the material was submitted to the City prior to noon on Wednesday and the material supporting the request is included in the Regular Meeting Agenda Booklet, which is produced at least 48 hours before the meeting.
- The public hearing notifications are designed to provide a meaningful opportunity for the public to present input and commentary to the decision makers. The Planning Commission held a public hearing, and City Council held a public hearing. Once the City Council public hearing is closed, then a proposed zoning ordinance amendment is brought back to City Council for its action.
- Any action that could have been taken when the original vote was taken can be taken if there is a successful motion for reconsideration. This includes but is not limited to setting the matter for a study session, passing the proposed ordinance, amending the proposed ordinance, postponing the matter, referring the matter back to the Planning Commission, or any other action that is supported by a majority of City Council.

- b. Also would like to hear an opinion of the scenario leading up to a revision on one councilmembers behalf, but the rest of us are not entitled to a study session on such a controversial, and important ordinance (voted down many times in the cities past). How does one councilmember get a major change to the proposed ordinance, while others are declined the opportunity to have input whatsoever on the ordinance?

## Response:

- City Council Rules of Procedure #11 allows for anyone on City Council to move to reconsider a specific vote from a previous meeting.
- If at least 4 persons support the motion for reconsideration (required by Rule 11 and Charter Section 5.6), then the item is back on the table again.
- Any action that could have been taken when the original vote was taken can be taken if there is a successful motion for reconsideration. This includes but is not limited to setting the matter for a study session, passing the proposed ordinance, amending the proposed ordinance, postponing the matter, referring the matter back to the Planning Commission, or any other action that is supported by a majority of City Council.

- c. I am also interested to hear how the city represented to a local paper that no one on council expressed any concerns over the ordinance, when I personally expressed many concerns I had, and other councilmembers expressed concerns as well.

Please also add this to the list of things I'd like circulated to the council for this evening's discussion. Please have them pay particular attention to the comments from our consultant.

"Ben Carlisle, of Carlisle/Wortman Associates, the city's planning consultant, said that while the Planning Commission has seen and discussed the draft language of the ordinance during at least five meetings, Feb. 8 was the first time the council had seen the ordinance. He said he thinks the council members who opposed it didn't feel comfortable voting on the ordinance without further discussion, **adding that they didn't raise any specific concerns.**"

Once again, this situation does not appear to have anyone at the helm of this discussion listening to anyone's concerns over a woodlands ordinance, except Jim Campbell's.

Link to the article here: <http://www.candgnews.com/news/planning-commission-ask-council-reconsider-rules-trees-90413>

## Response:

A copy of the article has been attached to this document. (C-1)

- d. Please circulate to council for this evening's discussion. Interesting perspective from former city manager John Szerlag on a tree ordinance. Also the sheet I used to read various points of concern on a tree ordinance at our last meeting, that apparently were misunderstood, ignored or otherwise not regarded as valuable to the discussion of a tree ordinance by the planning commission and other members of council. I would like all this on record for this discussion.

**Response:**

Council Member Henderson's notes on tree ordinance (D-1) and former city manager John Szerlag's memo to the city council on tree ordinance submitted on October 12, 2011 (D-2) have been attached to this document.

c: Mark Miller, Director of Economic and Community Development  
Tom Darling, Financial Services Director  
Lori Grigg Bluhm, City Attorney  
Table

BK/bt\Agenda\2016\02.22.16 – Council Questions and Responses



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# TROY Planning Commission to ask council to reconsider rules on trees

By Terry Oparka

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(File photo by Deb Jacques)

Posted February 17, 2016

Although a divided Troy City Council voted against a Woodland Protection ordinance Feb. 8, the Planning Commission will ask the council to reconsider.

A motion to postpone a decision and have a study session on the amendment failed 4-3, with councilmen Dave Henderson and Ethan Baker and Mayor Pro Tem Ed Pennington in support. Mayor Dane Slater, councilwomen Edna Abraham and Ellen Hodorek and Councilman Jim Campbell opposed it.

A motion to approve the amendment failed in a 4-3 vote, with Abraham, Hodorek and Slater in support. Henderson, Baker, Campbell and Pennington opposed it.

The proposed Woodland Protection ordinance would not apply to single-family homes, only developments requiring site plan approval.

The ordinance proposed that the city:

- Require tree mitigation — payment into a tree fund — when trees can't be replaced on-

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site.

- Require that the tree fund be used to plant trees on public property.
- Allow exceptions for dead, dying, diseased, and undesirable or invasive species.
- Protect landmark trees — which include beech, pine, spruce, red maple, sugar maple, oak, chestnut, dogwood, and pear, among others, each with a specific diameter at breast height — when possible, or require replacement or mitigation if those trees are cut down.
- Make the cluster option, where developers get leeway on density by providing more open space, natural features and more flexibility.

The proposed guidelines would require landmark trees that cannot be preserved to be replaced at a 100 percent ratio, and trees not considered landmark that are taken down in woodland areas would be replaced at a 50 percent ratio.

“Most of the people I talk to in Troy, when they see (land) get clear cut, it upsets them. And they don’t want to have to wait 40 years to have the trees back,” Slater said to the council. “I’ve had a lot of comments from the public. When they drive down John R, they see flat land. I think it’s disturbing to a lot of people.”

In January 2014, the Planning Commission, abiding by city ordinances, approved site plans for 21 detached condos for Mondrian Properties on John R, for which 3,000 trees on the site were clear cut. In 2015, the commission approved site plans for Mondrian for 24 detached condos at Long Lake and John R, for which over 650 trees were clear cut, and for 25 detached condos at Wattles and John R, where 400 trees were clear cut.

The homes are priced between \$250,000 and \$500,000.

“I don’t understand why we want to put such restraints on a developer that has invested his capital and purchased property in the city of Troy to better our community with good quality housing that people want to come and move into,” Henderson said.

Three people spoke during the public hearing. Dan MacLeish said he’d been building homes in Troy since 1972 in all the major subdivisions. He told the council that his company, MacLeish Building, also has a landscape company. He said that if only a few of the tall trees in a major forest are left standing, “what you will have happening in a good windstorm is those trees falling over. ... If the city wants to have a forested area preserved, they should buy it.”

“A good home builder, if there are trees on the property, we will preserve them if we can because we get more money for that particular house with the trees on it,” Mac-Leish said.

He noted that large trees with large root structures are very hard to keep unless there is “plenty of room for it to grow.”

“You’re really hamstringing the property owner and the developer and the builder. And a good builder will preserve the trees,” MacLeish said.

Developer Kamal Shouhayib said that trees are a very big attraction on a property, and he suggested that a way to keep more trees would be to modify the cluster option. The cluster option amends required setbacks and density in return for more open space.

At the Feb. 9 Planning Commission meeting, the commission unanimously voted to pass a resolution to ask the council to have a study session to reconsider the ordinance.

“I don’t think the process is necessarily over,” said Planning Director R. Brent Savidant. Ben Carlisle, of Carlisle/Wortman Associates, the city’s planning consultant, said that while the Planning Commission has seen and discussed the draft language of the ordinance during at least five meetings, Feb. 8 was the first time the council had seen the ordinance. He said he thinks the council members who opposed it didn’t feel comfortable voting on the ordinance without further discussion, adding that they didn’t raise any specific concerns.

“I think there’s an opportunity in the future for this to be considered with a positive

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result,” Savidant said. He added that feedback from the council after the meeting indicated that the ordinance would be greatly enhanced by encouraging and incentivizing clustering.

“The cluster provisions we have in our zoning ordinance now are very difficult to meet,” Savidant said. “We could look at that. The issues (the Woodland Protection ordinance and the cluster option) overlap.”

The resolution for reconsideration of the Woodland Protection ordinance will be submitted to the council for the next available meeting. The Planning Commission also unanimously approved a resolution that the commission begin to review the current cluster options for developers.

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**ABOUT THE AUTHOR**

Staff Writer Terry Oparka covers Troy and the Troy School District for the Troy Times. Oparka has worked for C & G Newspapers since 2000 and attended Oakland University and Macomb Community College. Oparka has won an award from the Michigan Press Association and three awards from the Society of Professional Journalists, Detroit Chapter.

[Full bio and more articles by this reporter](#)

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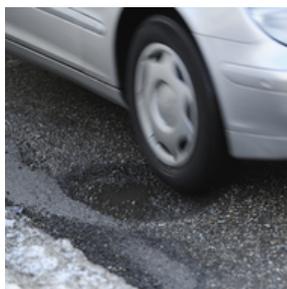
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UTICA

- 1) Private property rights
  - a) It's ok for a home owner to do what they want, but not a developer? A distinction without a difference.
  - b) An ordinance that isn't punitive, but by very definition is just that. It costs developers to abide by this.
- 2) Unknown real upfront costs to developer who's investing in our city, and no desire to put a cap on potential fines for a developer
- 3) Doesn't address the situation that brought this item to Planning Commissions attention
  - a) Border trees to residences accustomed to having a forested back yard
  - b) If drains are required at back lots of new development, lot might have to be cleared back there anyways
  - c) Builder may simply look at cost and say I'll pay into the fund... then we plant trees on Big Beaver
- 4) Tree city USA
  - a) How many years are we tree city USA without an ordinance?
  - b) People moving to Troy love our trees and will undoubtedly reforest their own lots as they see fit
  - c) Sylvan Glen Sub in 1976... not a tree in sight. Look at how mature that subdivision is Today
- 5) Builders I spoke with today had the following comments:
  - a) The last people that tried to tell people what to do with their land , lost population to North America, then lost North America
  - b) I have my eyes on a project right now, that I'll pull out of if this ordinance passes
  - c) Farming would never have occurred in Troy to begin with if no trees could be clear cut
  - d) Tree elevation not just quantity or quality of tree isn't even considered here. Saving a tree below street grade can be a recipe for tree death due to water accumulation and street run off
  - e) Saving a mature tree for the sake of saving it, is not necessarily the best idea. Examples of large trees saved only to be cut down at great expense three years later because root system was tampered with.
  - f) People are moving into the very developments that this ordinance views as inappropriate for the community without hesitation
  - g) I believe we allow a 20% bonus on difficult properties in a cluster ordinance, but there are many conditions attached to the bonus
  - h) The conditions should be relaxed in conjunction with this ordinance in order to soften the affects of the ordinance, and to invite easier and more interesting and exciting projects on difficult properties.



FROM THE OFFICE OF THE CITY MANAGER

October 12, 2011

To: The Honorable Mayor and City Council Members

From: John Szerlag, City Manager

Subject: We Do Not Have a Tree Preservation Ordinance

I was asked if city management was given direction by city council to develop a tree preservation ordinance. The short answer is no. That said, allow me to state that our new zoning ordinance provides density bonuses for developers that save trees. Please see the summary of regulations below. In addition, we are about 99% built out, so we are no longer going to have large tracks of vacant land bulldozed for development. And I have been advised that we have more trees in Troy at present than we had over 100 years ago.

Chapter 39 of the City Codes, The Zoning Ordinance includes the following tools to encourage preservation of open trees and open space or encourage planting of additional trees for new developments:

Section 10.03 Open Space Preservation Option permits lot area reductions in R-1A and R-1B in return for preservation of open space.

Section 10.04 One Family Cluster Option permits lot area reductions in R-1A through R-1E in return for preservation of open space. Additionally, provides a density bonus if a minimum of 50% of the property is preserved as open space.

A development objective of Article 11 Planned Unit Developments (PUD's) is the preservation of trees and open space. Example, PUD #1 preserved 25 acres of wetlands and 4 acres of high quality upland woodlands.

Section 12.01 Sustainable Design Option promotes environmental sustainability including tree preservation.

Section 13.02 Landscaping allows trees to be used for screening between incompatible uses. The previous Zoning Ordinance required a wall.

Section 13.02 requires parking lot landscaping, one tree for every 8 parking spaces.

Section 13.02 requires greenbelt trees along street frontages for all developments.

Section 13.02 permits the establishment of Preservation or Restoration Areas, as per the Property Maintenance Code.

Section 13.04 requires landscape or wall screening for at grade equipment.

Please feel free to call should you have any questions.

c: Mark F. Miller, Director of Economic and Community Development  
Tim Richnak, Director of Public Works  
Brent Savidant, Acting Planning Director  
Lori Grigg Bluhm, City Attorney  
Council Candidates