

Westwood Shade Tree Advisory Committee - Minutes – September 13, 2010  
Attendance: S. Scherba, L. Hayes, V. Sauer, C. Leyden, J. Russo and P. Grefrath  
Meeting began at 7:30 PM

The meeting was called to order by Linda Hayes at 7:30 PM, Sheryl Scherba read the Open Public Meetings Law Statement: "This meeting which conforms to the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a regular Westwood Shade Tree Advisory Meeting. Notices have been filed with our local official newspapers and posted on the municipal bulletin board."

The June 2010 minutes were voted on and passed.

**Telephone Messages:**

- Resident at 125 Lexington Ave – wants tree evaluated
- Resident question –how far from property line can you plant a tree
- Resident concerned about native trees being taken down in the neighborhood
- Resident on Lexington wants more trees on street
- Resident at 639 Repetti wants tree evaluated
- Resident at 213 David Hooper wants a new tree and tree evaluated
- Resident at 14 Clinton wants tree removed
- A resident wants us to evaluate a tree at 67 Whalen – not our tree – wrapped in cheesecloth.

**Correspondence:**

- a flyer was received from NJ dept of environmental protection – offering a seminar and/or webinar on the following (taken from their flyer)

This workshop will offer tools and resources to communities that want to protect and enhance their trees and woodland resources, including information about the DEP's Green Communities Grant, how to use computerized mapping software to protect and enhance resources and what to consider when developing a woodland protection ordinance.

NJ Shade Tree conference will be held October 22 and 23<sup>rd</sup> – Ginny will try to go on Friday and John R. will see if he can attend Saturday – Linda will check with Rick at the DPW to see if anyone can attend.

**A motion was had to open the meeting to the public.**

Resident Bill Heiman of 22 Newark Avenue would like 2 trees planted on either side of his driveway. He said that last October during a wind storm a huge limb came down from one of the trees. The DPW has since taken the tree down and in May most of the stump was removed. He is on the wired side of the street and so would need trees that would grow well in those conditions. STAC told him that we would be ordering trees this fall for next spring 2011 planting. We will call him with tree choices once we order.

**Ordinance Grant project**

- Linda and Chris will be meeting with John Anlian on Sept 22<sup>nd</sup>.

**Fall 2010 Tree Planting**

- Hopewell Nursery will be delivering 20 Zelcova (trees) this Friday 9/17.

**Sprint 2011 Tree Planting**

Linda will be ordering in October – she will find out what's available for Spring.

**Inventory update:**

Paul Cowie should be done in about 2 weeks (end of September).

**Ketler Bus Lane:**

STAC will have Chris prepare a letter in response to Mr. Zoellers letter of June 30<sup>th</sup>.

**Council Liaison update:**

Shade Tree Initiatives are attached to these minutes – 4 pages brought to us by liaison Peter Grefrath.

Meeting ended at 10 PM

## Shade Tree Initiatives September 2010

We should be picking our battles with the fines.

Letter to the BofE was a good idea and a good process to follow

- Their response was predictable
- 1) **STAC** can and should continue to write letters and hope to be compensated.
  - Cc: code official on all correspondence.
  - It also has the right of STAC to sue someone to impose a penalty; however, legal costs should be included in the budget if this is a route the STAC wishes to take in the future.
- 2) The **Planning and Zoning Boards** can review tree loss either in advance or during the variance process. During the variance process, the Boards can issue penalties.
  - a. Recommend penalties for violating the Ordinance should be the responsibility of and recommended by the Board Engineer or the Planner.
  - b. No board in town actually has enforcement powers. The most the Planning Board and Zoning Board can do is withhold performance bonds or a CO.
  - c. The penalties must be included in the resolution and the code official should be informed about any such issues so he can keep a watchful eye on them.
  - d. The Board Engineer should inform Armand when trees are being taken down in violation with 05-14.
  - e. In this manner, the Code Official can withhold a CO; or the Board can withhold a CO, if the penalty has not been paid.
  - f. If the Applicant objects, they can go to court and fight the ruling.
- 3) The **code official** is the only person who can issue summonses on behalf of the Borough.
  - a. Must be able to interpret the Ordinance
  - b. Must be able to work with the contractors for the betterment of the Borough.
  - c. Must be ready to go to court if the Applicant objects.
  - d. The boards have no supervisory control over Armand, so he has the ability to:
    - i. Evaluate the types and number of trees being removed
    - ii. Use the ordinance as a format and establish a fine.
    - iii. Write a summons if he feels it is violation; or insist upon replacement trees in accordance with the ordinance.
    - iv. In most towns, criminal prosecution is handled by the code enforcement officer and he/she must give them a ticket.
  - e. Armand's View: "People need to be able to lawfully remove trees to make property useful and then fine them for the excess; after giving them a chance to replant replacement trees according to 05-14."

- 4) **Our court** might be tempted not to enforce an Ordinance if it feels it is heavy handed. The court might feel the ordinance is discriminatory.
- a. The municipal court is the entity that enforces penalties if given summonses. It imposes the fine. The process:
    - i. Code Official writes a summons
    - ii. Summons is given to the plaintiff
    - iii. Defendant pays summons or goes to a municipal court proceeding
  - b. The Defendant will be fined by the court, depending upon the Judge's interpretation of Ordinance 05-14, as well as the Surrounding Circumstances:
    - i. Defendant's ability to pay
    - ii. Conduct the Defendant shows in court
    - iii. Is the defendant a first-time offender
  - c. It is Russ's opinion that the Westwood court would not impose a \$16,000 fine. The most it will impose is about a \$2,000 fine.

Text from Russ's September 13 Letter: Turning to the Ketler School situation, there is a saying that "hard cases make bad law" and this may be a clear example of same. The necessity for that construction is beyond the jurisdiction of any agency in the Borough and has been determined by the Department of Education. Without a clear and comprehensive ordinance prohibiting tree removal separate and apart from a development application before a Westwood board, it would be difficult to prevail in an action for fines and/or penalties. In addition it's all taxpayers' money so while we might seek a test case for the imposition of replacement costs in a civil proceeding where an individual cuts down trees owned by the Borough or on their own property, the Board of Education is, in my opinion, a poor test case. I would encourage some type of compromise or voluntary arrangement with the Board of Education if possible and I would be happy to assist in that regard.

**If willing to do it, Armand is going to have to write a summons against the Board of Education and bring them to court.**

I talked with several people about this and basically I received the same reaction. "Is seems if the town is suing a town entity, isn't it just a transfer of taxpayer money from one bucket to another – plus legal costs?"

**This is a tough PR stance to take.**

That is a choice the Board must decide upon.

## Issue of the 145/191 Westwood Blvd Issue

Armand has reviewed the ordinance, recalls our meeting, has spoken with the contractor, and has an agreement that the Contractor should pay \$9,350 for the trees taken down and he feels that is a fair Penalty.

## What steps should STAC take Going Forward?

1. STAC should create a series of Master Folders so it can maintain an official running record of correspondence for all initiatives before it or that are pending in the Borough.
2. Make sure all tree companies have a copy of the current Ordinance 05-14 (done that)
3. The County maintains a list of all ordinances (tree companies can access ordinances from county) and Russ says Westwood's Ordinance is not on the list. **{Asked Karen to report to me on this}**
4. **ReWrite the Ordinance and make it stronger**
  - a. Russ felt that the goal of our Ordinance should not be viewed as revenue raising;
  - b. And he feels our current Ordinance seems to be revenue raising and is clumsy worded.
5. **Make sure that all Resolutions coming from our boards contain testimony from the Board Engineer, who should include the Penalty into the Resolution, and that the Board not grant a CO until the provision is met.**
6.  STAC should request from the Board Engineer a review letter from each application regarding trees, thus being notified of any pending application.
7. STAC should create a Tree Removal Permit that is handed out by the Building Department; with the building department making all tree contractors aware of this new policy.
  - a. A permit for removing trees; all trees, any trees. No Permit, you get a summons.
  - b. Armand favors such a permit (getting me a copy of an effective one)
  - c. Armand will help design such a permit
  - d. Remember: If you have a permit, the act of cutting down trees without a permit is a crime – and that includes a tree company doing it without a permit.
  - e. Armand is the enforcing agent. STAC should do everything it can to work cooperatively with Armand.
8. All Tree companies doing business in Westwood should have to register annually with the Building Department and have a sticker on their truck indicating that they have been approved for the year.
  - a. Know they have reviewed the ordinance
  - b. \$35 fee goes to STAC, with STAC responsible to producing the stickers [asked Karen for pricing]
  - c. Sticker costs should be included in 2010 budget. Revenues go to the Penalty Account.
  - d. Stickers picked up at the Clerk's office.

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### Finish Software Inventory

- a. DPW currently undermanned.
- b. Councilman Phayre will work with Rick Woods on a Tree Pruning Schedule as soon as the Software is ready and reports can be created to indicate which trees should be pruned.