

MINUTES OF SEPTEMBER 13, 2010, TREE PROTECTION
SUBCOMMITTEE OF ENVIRONMENTAL COMMISSION

Present:

Adam Kreuzer
Laura Glaza
Bob Marcott
Lee Neary
Jim Westcott

Special guest: Peggy Drescher

Public participation:

Linda Gilbert
Pat Moran

Pat Moran described the construction activities at 616 N. Park, Glen Ellyn, and the resulting loss of trees on his adjacent property.

The subcommittee discussed issues regarding protection of trees on property adjacent to construction activities including the current ordinance. The subcommittee concludes that it is essential that owners of properties adjacent to construction activities be given notice of the Tree Protection Plan and of all protective actions to be taken regarding the trees, hedges and shrubs on their property. Such notice would permit the adjacent owner to monitor whether the plan is followed and would give them an opportunity to notify the village if the plan is not followed in order to ensure that trees, hedges and shrubs on their property are protected during construction activities.

The subcommittee believes that changes should be made regarding protection of trees on private property adjacent to construction activities. First, all Tree Preservation Plans should be prepared by certified arborists. The requirement that the plan include identification of certain trees on adjacent properties within fifteen feet of the property line should be expanded to include identification of all trees, hedges and shrubs on the adjacent property.

Second, methods for enforcement of the ordinance should be strengthened. The ordinance should be revised, if legally possible, to create a private right of action for the owner of property adjacent to construction activity for damage or loss of a tree on his or her property. The subcommittee acknowledges that the village does not have the resources to monitor the effect of construction activities on adjacent lots throughout the village. The only deterrent effect currently in the ordinance appears to be the issuance of a stop work order. By permitting the owners who lose a tree to construction activity to sue for the value of the tree, it is believed that the owner and contractor on the construction-activity lot will exercise greater caution in following the tree protection measures outlined by the arborist. In addition, consideration should be given to a village-imposed fine for failure to follow the tree protection measures in the Tree Preservation Plan. Finally, the village should impose stop-work orders where failure to follow

the tree protection plan increases risk to the trees, hedges and shrubs located on adjacent property within fifteen feet of the property line. The stop-work order should remain in effect until appropriate corrective measures are taken.

Third, the measures described in the Tree Protection Plan to protect owners adjacent to construction activities should be mandatory rather than recommended practices. Without this requirement, there would be a serious lack of protection for the owner of property adjacent to construction activities. A mechanism should be created to find compromises where the enforcement of the protective measures for trees adjacent to construction would create an undue hardship for the owner or developer of the lot under construction. Such mechanisms should include notice to the adjacent owner of any proposed changes to the plan.

Fourth, the subcommittee believes it is critical that, in advance of construction activities, owners of lots adjacent to proposed construction activity be given a copy of the Tree Preservation Plan and a notice which advises the owner that, in the event the tree protection measures are not followed, they can advise the village which might issue a stop work order and/or that they can bring a legal action of their own for damages or to enjoin violations of the Tree Preservation Plan as it relates to protection of tree on their own lot. In addition, the notice should advise the adjacent owner that they can engage their own arborist to challenge the adequacy of the tree protection measures described in the Tree Preservation Plan obtained by the owner of the lot on which the construction will occur and can attempt to obtain the village's approval for enhanced tree protection measures.