

# MEMORANDUM

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**To:** Andrew Hand, City Attorney  
**From:** Virginia Cassady, Esq.  
**Subject:** Proposed tree ordinance – Dunnellon – responses to citizen’s questions/comments  
**Date:** August 4, 2016

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Following are my responses to a citizen’s questions and comments about the May 2016 draft tree ordinance and your May 26, 2016 Memorandum regarding that ordinance. The citizen’s versions of these two documents with his questions and comments are attached. For convenience, I have inserted numbers beside each of his comment/question which correspond to the numbers below in my responses.

## **Comments to your May 26, 2016 Memorandum.**

1. There are no missing words. See the Memorandum in its original form contained in the packet for the June 28, 2016 Tree Board meeting. Although that meeting was cancelled, the packet is still available on the City’s website, together with the May 2016 version of the proposed ordinance.

2. As your Memo says, exempting residents of existing single family homes and duplexes is a major policy shift. Beginning in April 2014, Council members expressed displeasure and frustration with the existing code regulating tree removal. Most of these discussions occurred in Council meetings in which applications for tree removal permits were before Council. At the request of Council and the former city manager, the city attorney’s office began drafting a new tree ordinance in May 2014. Over a period of many months, I modified the contents of the draft ordinance as more discussions occurred at Council meetings and the city attorney heard what policies would be acceptable to City Council. By January 2015, when the first draft was finalized, I included this exemption policy after hearing discussions among Council members.<sup>1</sup> This exemption was not a recommendation of the city attorney; it was included as a direct result of hearing from Council. See note 3 below.

3. The reason for the permitting exemption of single family homes is not because of homestead exemption. The explanation of the Memo was to underscore comments made at Council meetings that the majority of existing single family owners who currently must seek

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<sup>1</sup> A number of local governments exempt existing single family resident. I recall reviewing about five codes of local governments, but, without doing further research of our files, I cannot say which local governments’ codes were reviewed.

permits to remove trees reside in smaller homes on smaller lots. The expression of Council in 2014 was that it is a burden to residents.

4. The citizen's comment is that the tree ordinance needs to be better publicized so they know the requirements for tree removal. Education of the public is always beneficial. However, many emails to and from City staff since early May, 2014,<sup>2</sup> show that the Tree Board and staff were not enforcing or following portions of the tree ordinance.<sup>3</sup>

5. The downside of requiring the Tree Board to review and make recommendations on tree removal for site plans is that it requires a separate hearing, in addition to coming before the Planning Commission and Council. The benefit is that, since the City has no Development Review Committee, arborist, or planner to provide expertise on the requirements of the tree ordinance, and since the Planning Commission does not normally apply the tree ordinance, the Tree Board's familiarity with the tree ordinance would help in the review of the site plan as it pertains to trees. Council members expressed their opinions that the Tree Board was more familiar with the tree removal process. In an attempt to provide flexibility and avoid delays because of the Tree Board's review, proposed Sec. 74-36(e) allows the Tree Board to review the site plan either prior to or after the Planning Commission's public hearing.

#### **Comments to May 2016 draft ordinance.**

*Background:* I provide the following background as a general response to some of the citizen's comments.<sup>4</sup> Beginning in 2014, I was asked by staff on many occasions to assist in interpreting the tree ordinance for removal permits which were administratively approved or were to go before Council. Sec. 74-63 was especially difficult to interpret and enforce.

After beginning work on revising the tree ordinance when Council directed that the tree ordinance be amended, the City sent this office the Tree Board's recommended version of the ordinance. Not knowing that the Tree Board had produced a recommended rewrite, I started from scratch in the draft process to incorporate the changes which the Tree Board wanted. The revision with all the legislative underscoring was messy and unreadable.

You were initially involved in the rewrite and wrote to me on May 27, 2014: "...I think it would be a good idea to strike Dunnellon's current ordinance [Art. III, Ch. 74] ENTIRELY and then adopt a modified version ... that works for Dunnellon ..... Total overhaul. End result = better and more coherent ordinance, lower bill for the City." I forwarded your email to Eddie Esch and said, "I am very much in agreement with Andrew that it would be less costly to start from scratch with Dunnellon's tree ordinance....[the current ordinance] is not logically ordered and is not written well."

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<sup>2</sup> In our file, we have two inches of emails regarding tree removal applications, public hearings on tree removal applications, and the tree ordinance. I will be happy to make these available to the Tree Board or Council, although they are all part of the City's public records.

<sup>3</sup> Some examples: The code requires that if certain trees are removed, replacement trees must be planted. Also, the Tree Board was not imposing the required penalties for removal of trees without permits. Notice requirements of the code were not being followed.

<sup>4</sup> The emails going back to May, 2014 confirm the information contained herein.

The May 2016 proposed ordinance therefore does not show what changes were made to the current codified tree ordinance. As we both know from drafting hundreds of ordinances, when legislative underscoring is confusing, interrupts the flow of the ordinance, and could result errors being made when the ordinance is codified by Municipal Code Corporation, the current code provisions should be deleted in their entirety and completely rewritten. This is especially true where, as here, the current ordinance needed to be re-ordered to make logical sense.

Below are Notes corresponding to the numbers of the citizen's comments:

1. The reference to "clean version" is a carryover from the January 2015 version. It communicated that there are no track-changes and that Art. III, Chapter 74 contained no legislative underscoring.

1a. The "Contents" was included in the draft for the convenience of the reader so show the sequence of sections of the proposed Article III rewrite. You will find this sequence is similar to other tree codes.

2. I am not sure what the question marks communicate. See above.

3. The only portion of the ordinance with underlined words and strikethrough or \*\*\*\* is Sec. 2-236 because the revisions to this Section are not so comprehensive that it is required to be deleted and rewritten.

4. When drafting legislation, it is very common to insert the WHEREAS clauses (legislative findings and intent) at the end of the drafting process. In this case, we expected that there may be revisions and changes made by the Tree Board and Council during workshops which would express legislative policies and intent. Thus, the final version prior to first reading would include the WHEREAS clauses.

5. Section 2 does not refer to the original Ordinance. Ordinances are typically divided into Sections. Section 2 shows changes to Sec. 2-236 of Division 4, "Tree Board," Chapter 2 of the Code of Ordinances.

6. There is no discontinuity. See Note 5. When drafting amendments to existing legislation, we typically cite to the sections of the codified version of ordinances rather than citing to ordinances themselves. Section 3 explains the purpose of Section 3.

7. If I had retained the legislative underscoring, it would extremely difficult, perhaps impossible, to read and make any sense of what was being adopted and was being changed. See last paragraph above under Background.

8. See Note 2 under Comments to your May 26, 2016 Memorandum above.

9. The underlined subsections (10) – (12) and Sec. 74-63 are in the May 2016 version but are not underlined therein because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

10. The stricken-through subsection does not appear in the May 2016 version because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

10.a. See Note 10.

11. The underlining of Sec. 74-64 has been done by the citizen. Sec. 74-64 of the May 2016 version is not underlined for the reasons set forth in Note 9 above.

12. Subsection (b) does not repeat subsection (a) above it. Subsection (a) tells *what* the application for a stand-alone permit must include. Subsection (b) tells *how* stand-alone applications will be processed.

13. Existing 74-65 has not been deleted in its entirety. Under the May 2016 version, it is renumbered to Sec. 74-67.

14. Planting standards in existing Sec. 74-65 were removed in the Tree Board's recommended draft, and that is the reason why they were removed in the May 2016 version (under newly numbered 74-68).

15. Sec. 74-68 regarding champion and heritage trees has not been deleted in its entirety insofar as its contents are concerned. The definition for heritage trees has been moved to the definition section, Sec. 74-61. Champion trees are eliminated because their inclusion is meaningless. Champion trees enjoy distinction because they are on a registry, similar to historic sites. I was advised by the City that there are no designated champion trees in the City.<sup>5</sup> Following are changes in the May 2016 version:

- Under the proposed May 2016 version, the Tree Board hears applications for removal of heritage trees and, if the application is denied, the applicant can appeal to City Council. This was changed because Council thought the Tree Board should be the final Board to hear most applications which are currently coming for Council for decision-making because the Tree Board has the expertise.
- Sec. 74-66(e) of the May 2016 version regarding heritage trees is new. These trees are protected when a parcel is subdivided: "Subdivision plats shall shift lot lines to minimize placing heritage trees in the buildable area of the lot if practicable."

Under Sec. 74-62(b) and the definition of heritage tree under Sec. 74-61, existing single family residences must apply for a permit to remove heritage trees even though they are exempt from obtaining permits for removal of other protected trees (with the exception of the river protection corridor).

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<sup>5</sup> Your May 26, 2016, Memo explains this.

16. Sec. 74-68 is in the May 2016 version but is not underlined because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

17. Sec. 74-66(f) contains tree replacement standards when an applicant obtains a permit to remove a tree. The replacement standards apply whether a stand alone permit or a permit associated with a site plan or plat approval is sought.

18. Secs. 74-71 through 74-74 are in the May 2016 version but are not underlined because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

**Conclusion.**

Please let me know if you have any questions or need clarification.