




MEMORANDUM

TO: Ricky Allison, Parks & Recreation Director
Town of Belleair

CC: JP Murphy, Town Manager
Town of Belleair

FROM:  Christine M. Fisher, AICP
Calvin, Giordano & Associates, Inc.

SUBJECT: **Belleair Staff Report**
City-Initiated Proposed Revisions to Chapter 74, Article VI.
Resource Protection Standards, Division 2 – Trees; Town of
Belleair Code of Ordinances

DATE: June 29, 2020

BACKGROUND

Per the Town's direction, we have reviewed Chapter 74, Article VI. Resource Protection Standards, Division 2 – Trees of the Town of Belleair Code of Ordinances for consistency with recent changes in State Law related to tree protection on residential property, as well as assessed how comparable communities protect "grand" or "heritage" trees. The following summarizes our recommendations to revise the Tree Protection regulations to address these two issues.

CONSISTENCY WITH CHAPTER 2019-155 LAWS OF FLORIDA, SECTION 163.045, FLORIDA STATUTES

In 2019, Florida Legislature adopted House Bill 1159 (Chapter 2019-155, Laws of Florida), creating Section 163.045, F.S.; prohibiting local governments from requiring notices, applications, approvals, permits, fees, or mitigation for the pruning, trimming or removal of a tree on residential property if a property owner obtains specified documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree "presents a danger to persons or property"; and prohibiting local governments from requiring property owners to replant such trees. It was approved by the Governor on June 26, 2019 and became effective on July 1, 2019. A municipality or governmental agency may request that the residential property owner provide the report from a certified arborist or licensed landscape architect to verify that the tree was deemed a danger to person or property. This exemption does not apply to non-residential property nor mangroves and mangrove protection areas.

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The Town of Belleair Land Development Code, does not currently exempt residential property owners from compliance with tree protection requirements regarding trees that present a danger to persons or property. Many Florida communities have revised their land development codes to exempt such trees from tree regulations and permitting requirements. To be consistent with Section 163.045, Florida Statutes state statutes, the Town of Belleair should include provisions in Section 74-382 of the Land Development Code to exempt “dangerous trees” on residential properties from tree protection requirements.

PRESERVATION OF GRAND TREES

The Town of Belleair has requested that we research contemporary land development regulations pertaining to “Grand” Trees and recommend revisions to the **Town’s Code of Ordinances, Chapter 74, Article VI, Division 2 – Trees**, to protect and preserve significant trees. Grand Trees are larger in size and canopy coverage than a standard tree. They provide a valuable natural resource and ecological benefit to the community and enhance the overall quality of life of its residents. To better protect trees of significance, the Town will need to determine what trees should be considered “Grand Trees” and establish additional criteria to ensure their continued preservation.

Communities use a variety of approaches to designate and protect a Grand Tree. Some municipalities designate a tree as a Grand Tree according to size and species and/or condition. For instance, designation of a Grand Tree in the City of Dunedin is determined based on a list of various tree species and corresponding minimum trunk diameter at breast height (DBH: 54 inches above the surface of the ground at the base of the tree, or sum of diameters at this height if there are multiple stems) as well as an overall condition rating as defined in the City of Dunedin Tree Condition Rating Guidelines and tree Evaluation Form for Overall Condition rating, as provided by their Parks Division. In St. Petersburg, a Grand Tree is defined as any protected tree which is 30 inches at DBH or larger, excluding laurel oaks. Temple Terrace uses a hybrid approach in which Grand Trees include any tree on the Approved Tree List with a diameter of at least 24 inches at DBH.

RECOMMENDATION

Dangerous Trees

The Town should revise the Land Development Code to address the recent changes to Florida Statutes regarding trees on residential property that have been determined to be a danger to property or persons by a certified Arborist or Landscape Architect. The following amendment is recommended:



Sec. 74-382. - Exemptions from tree protection requirements.

- (a) *Nuisance trees.* The following types of trees shall be exempt from the tree protection requirements of this land development code:
 - (1) Brazilian pepper.
 - (2) Malaleuca (punk tree).
- (b) *Emergency work.* During emergencies caused by a hurricane or other disaster, the town manager may suspend the tree protection regulations.
- (c) *Dangerous Trees.* Trees on residential property that have been determined to present a danger to persons or property by an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect are exempt from the tree protection requirements of this land development code, pursuant to Section 163.045, Florida Statutes. This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to Sections 403.9321-403.9333, F.S. Should Florida Statute 163.045 be repealed or otherwise withdrawn, the exemptions of this Section 114-103(b) shall no longer apply.

It is also recommended that revisions be made to permit requirements to reference the tree protection exemption:

Sec. 74-381. - Permit required for removal of protected trees.

On any real property within the limits of the town, it shall be unlawful for any person to remove or cause to be removed any protected tree without first having procured a permit as provided for in this land development code, unless exempted pursuant to Section 74-382. Where any site is proposed for development on which there are protected trees, a tree survey shall be provided as part of the development permit application.

Applicability

While the Town's Tree regulations include a list of trees that are exempted from the tree protection requirements, it may be helpful to add applicability language to clearly indicate the circumstances in which this division is applied. For instance, a new Applicability section could be added as Section 47-380 which describes Protected Trees, or references the definition of Protected Trees found in **Section 66-10, Definitions**. Another option is to revise the following section to incorporate applicability criteria:

Sec. 74-382. - Exemptions from tree protection requirements. Applicability

The provisions of this division shall apply to all Protected Trees, as defined in Section 66-10, except the following shall be exempted:

- (a) *Nuisance trees.* The following types of trees shall be exempt from the tree protection requirements of this land development code:
 - (1) Brazilian pepper.
 - (2) Malaleuca (punk tree).



- (b) *Emergency work.* During emergencies caused by a hurricane or other disaster, the town manager may suspend the tree protection regulations.

[we recommend adding (c) as noted above]

Protected Tree Designations

Section 74-383(c)(1) and (2) of the Town’s Code of Ordinances describes the process to designate historic trees or historic stands of trees and specimen trees; however, these paragraphs appear to be unrelated to the section in which they are located –“Conditions for Removal; Replacement”. It is recommended that a new section be added entitled “Protected Tree Designation”, the aforementioned paragraphs be moved into the new section, and new language be added regarding Grand Tree designation. This new section should be located between “Applicability” (currently Exemptions) and “Conditions for Removal; Replacement”, which may affect the overall section numbering for this Division of the Code.

Grand Trees

As mentioned in the paragraph above, a new paragraph regarding Grand Tree designation should be added under a new “Protected Tree Designation” section. In determining what protected trees to designate as Grand Trees, Belleair may want to consider one or a combination of the following options:

- Include all Protected Trees greater than a minimum trunk diameter at breast height; and/or
- Create a list of Protected Trees by species with minimum trunk diameter at breast height; and/or
- Establish a minimum overall condition rating threshold and criteria and rating system.

We recommend using the simplest method of designation, and least open to subjective interpretation, that includes all Protected Trees greater than a minimum trunk diameter at breast height. This minimum size should be based on the typical size of larger specimen trees to which the Town seeks greater protections.

Permits

Many communities require that a Grand Tree Pruning Permit be obtained to ensure that larger diameter limbs are not trimmed without oversight and approval. Belleair only requires permits for removal of protected trees. It is recommended that the Town consider requiring tree pruning permits for Grand Trees, Historic Trees, and Specimen Trees either when an applicant seeks to trim these designated trees, or at a minimum, when an applicant desires to prune any branch greater than a specific diameter (e.g., St. Petersburg requires a permit to trim any branch eight inches or greater in diameter of any Grand Tree, while Dunedin requires a permit for pruning any



Grand Tree). Approvals for Designated Protected Tree Pruning Permit should be approved administratively and not need to be approved by the Town Commission. Should the Town decide to include this additional level of tree protection, **Section 74-381 - Permit Required for Removal of Protected Trees**, could be modified to include an application process for Pruning of Designated Protected Trees. It is important to note that this would only apply to non-exempted Protected Trees. Approval for a Designated Protected Trees Pruning Permit could include the following criteria:

- That the work be performed under the supervision of a Certified Arborist and done in a matter consistent with ANSI A300 standards,
- That the limbs or limbs proposed for removal are diseased, injured, in declining condition; create a danger to persons or property, create an unsafe sight line on a right-of-way or other vehicular use area,
- That removal of specific limb or limbs is necessary to promote the general public health, safety, or welfare or the health of the tree.

Criteria for Removal

Pursuant to **Section 74-383(a)(2) of the Code of Ordinances**, an applicant that requests removal of a Protected Tree must demonstrate a minimum of one or more specific conditions to receive approval. These conditions include:

- a. A permissible use of the site cannot reasonably be undertaken unless specific trees are removed or relocated.
- b. The tree is located in such proximity to an existing or proposed structure that the safety, utility or structural integrity of the structure is materially impaired.
- c. The tree materially interferes with the location, servicing or functioning of existing utility lines or services.
- d. The tree creates a substantial hazard to motor, bicycle or pedestrian traffic by virtue of physical proximity to traffic or impairment of vision.
- e. The tree is diseased or weakened by infestation by insects, abuse, storm, fire or any other cause or condition whatsoever, and the weakened condition of the tree presents a threat to persons or property, as determined by the town manager or the designee of the town manager.
- f. Any law or town regulation requires the removal.

Approval to remove Historic Trees, Historic Stand of Trees, or Specimen Trees, is determined by finding of the Town of Belleair Commission that the tree or stand of trees is a hazard or that it is not economically or practically feasible to develop the parcel without removing the tree or stand of trees.



It is recommended that the Town consider review and approval of Grand Tree Removal Permits administratively, and establishing removal criteria condition on:

- Whether it presents a safety hazard to persons or property due to proximity to an existing structure, or creates an unsafe sight clearance that cannot be mitigated, as supported by documentation from a licensed engineer or architect, or
- If the Grand Tree is dead, diseased, damaged, or in declining condition as provided by written report of a certified arborist, or
- If the Grand Tree is located in an area where a structure or improvement is proposed, and that the retention of the tree is such that no reasonable economic use can be made of the property without removal of the tree, provided that the tree cannot reasonably be relocated because of age, type or size of the tree.

Criteria for Replacement

Section 47-383(b)(3) of the Town of Belleair Code of Ordinances states “If replacement trees are provided by the owner...for each inch of diameter at breast height of trees removed, an inch of diameter at breast height shall be replaced.” While species of replacement trees are listed in the Code, there is no requirement that larger trees be replaced with larger species trees. For instance, a 28 inch DBH Live Oak could be replaced by multiple small shade trees which will never grow up to the same caliber as the removed Live Oak. It is recommended that the Code be revised to state that Grand Trees that are approved for removal be replaced by only those large and median shade trees currently listed in the Code (or some other Town-approved subset):

Large street and median shade trees:

- Live oak
- Weeping elm
- Laurel oak
- Sycamore
- Red cedar
- Pignut hickory
- Slash pine
- Bald cypress
- Southern magnolia

Upon your direction, we would like to share this information with the Town of Belleair Park & Tree Board and seek their input at their next public meeting. We will then proceed with drafting ordinance language based on their recommendation to be considered for adoption by Town Commission.