

PLANNING COMMISSION

Anna Butler
Beau Livingston
Robert J. Matkowski
Elaine McGruder
Michelle Nooney
David Roberts
Marie Rodriguez-Beebe



ACTING CITY MANAGER
Michelle Owens

**ACTING COMMUNITY
DEVELOPMENT DIRECTOR**
Michelle Owens

CITY ATTORNEY
Edward M. Hughes/ Tracy O'Connell

**Planning Commission Meeting
MINUTES
June 17, 2024**

Chair Elaine McGruder called the June 17, 2024, Tybee Island Planning Commission meeting to order. Commissioners present were **Anna Butler**, **Marie Rodriguez-Beebe**, **Beau Livingston**, **Robert Matkowski**, **Vice Chair Michelle Nooney** and **David Roberts**.

Pledge of Allegiance

Consideration of Minutes:

Chair Elaine McGruder asked for consideration of the May 20, 2024, meeting minutes. **Marie Rodriguez-Beebe** made a motion to approve with corrections. **Beau Livingston** seconded. The vote to approve was unanimous. **David Roberts** did not vote; he was absent from the May 20th meeting.

Disclosures/Recusals:

Chair Elaine McGruder asked if there were any Disclosures or Recusals. There were none.

Old Business:

Chair Elaine McGruder asked if there was any old business. There was none.

New Business :

Appeal: Tree ordinance – 2 Carpenter Road – 40002 02001 - Zone R-1-B - Harry Drummond.

Acting City Manager Michelle Owens stated originally the City Arborist visited the site and denied the removal of the tree. The Drummonds are appealing based on the fact that they feel like the position of the tree impacts their ability to get out of the driveway, and also, they feel it is close to a wire. The Arborist stated he believes that is a cable wire. The Arborist visited the location a second time after the appeal came in and still felt like the tree permit was not supported with the reasons why. He took his own pictures which are in the packet. He felt like the tree was a sufficient distance from the driveway and from the cable wire. After getting an additional memo from Mr. Roberts we talked to the Arborist again today with his concerns and he felt like that specific tree, the Palm, is listed in the significant tree list. We have denied Palm trees in the past. Staff supports the denial.

Harry Drummond, who lives at 2 Carpenter Road, approached the Planning Commission, and stated the position of the tree is hard to maneuver around when we pull out of the garage. He stated he would not mind relocating the tree.

Vice Chair Michelle Nooney asked, is your plan to add more driveway because of the way it curves? **Mr. Drummond** stated yes, if the tree is gone, we could make the driveway rectangular. **Bob Matkowski** asked Mr. Drummond if he had done any work to the driveway and garage since you bought the property. **Mr. Drummond** stated we have not done anything since we bought the property a year ago. **Bob Matkowski** asked, have you made any effort to back the car in so it would be easier to pull the car out. **Mr. Drummond** stated he thinks it could be done, but his wife is not that good at doing that. **Anna Butler** asked why do not you and your wife switch sides. **Mr. Drummond** stated his car is a lot longer than hers and the driveway is shorter on her side. **Anna Butler** stated the house has been there since 1986 and no one has had a problem backing out to date. **David Roberts** stated he would like to discuss a memo he sent everyone today. This is about some research he did and there is a confusing point. **David Roberts** also stated he thinks the Planning Commission should recommend to council to override staff's decision and approve the applicant's request. He stated the points and opinions from his memo that is "Attached" to these minutes. **Bob Matkowski** made a motion to deny. **Marie Rodriguez-Beebe** seconded. Voting for the denial was **Anna Butler, Michelle Nooney, Bob Matkowski, Beau Livingston and Marie Rodriguez-Beebe**. Voting against the denial was **David Roberts**. The vote for denial was five to one.

Adjournment: 7 :30pm
Lisa L. Schaaf

RE: Appeal of Staff denial of property owner's application for permit to remove tree
Harry Drummond, 2 Carpenter Road PIN 40002-02001
Before the Tybee Island Planning Commission on June 17, 2024

QUESTION PRESENTED

Should City Council grant – over Staff's objection – the appealing property owner's application to remove a single palm tree (among several) on his property?

In denying the application, Interim City Manager and acting Community Development Director Michelle Owens ("Staff") noted: "Palm trees are on the city's significant tree list and therefore protected by ordinance. Application was denied... Palm is protected as per ordinance."

That said, the palm at issue blocks straight-in access to the home owner's garage and requires his family to steer cars around a curve in reverse to avoid hitting the palm when they attempt to exit or enter the garage beneath their home.

CONCLUSION

In my opinion, by misinterpreting Tybee's Tree Ordinance – or by interpreting it unreasonably – Staff wrongly denied the application. Therefore, Planning Commission should recommend that Council: (a) reverse Staff's denial; and (b) grant the application.

ANALYSIS

"Every application of a text to particular circumstances entails interpretation."¹ The interpretation of an ordinance is a fundamentally legal exercise – properly carried out by close examination of, and adherence to, the text of the ordinance. Fortunately, several common-sense legal canons (i.e., rules or tools), universally accepted by Georgia courts, can assist Planning Commissioners and City Council members in that interpretation. Those rules (referred to below) are conveniently set out in *Reading Law*: a book on legal interpretation that has been cited as authoritative in more than 70 decisions by Georgia appeals courts since 2012.

A. Because the applicant's palm tree is not a "Significant Tree" (as that term is defined in Tybee's Land Development Code ("LDC")), Staff was wrong in denying the application under their mistaken belief that palms are deemed to be a "Significant Tree" on Tybee Island. They are not.

It is fair to say (for reasons stated below) that Tybee's Tree Ordinance was not "artfully drafted." So Staff's misinterpretation of its confusing language may be understandable. Yet, if the Planning Commission applies commonly accepted, useful interpretative rules, the answer becomes clearer, and no longer as confusing.

Four of those rules are particularly useful here.

¹ *Reading Law, The Interpretation of Legal Texts ("RL")*, Scalia & Garner, 2012 (Canon 1, p.53).

- “The words of the text are of paramount concern, and what they convey in their context, is what the text means.” [RL Canon 2, p.56];
- “Definition sections ... are to be carefully followed[,]” and rigorously applied. [RL Canon 36, p.225, (“It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of other textual indications; the definition is virtually conclusive.”) p.228];
- Nothing is to be added to what the text states or reasonably implies. [RL Canon 8p.93]; *and*
- Including a list of included items implies the exclusion of unlisted items. [RL Canon 10 p.107]

Thus, definitions are primary; and they are the most reliable indication of a legislature’s (Council’s) intent. Here, LDC § 2-010 specifically and precisely defines what is meant by the term “Significant Tree”:

“Significant trees [as] trees having a DBH [*diameter at breast height*] of ten inches or greater of the following variety: southern red cedar, *Juniperus silicola*, or hardwoods native to [the] Georgia coast. Hardwoods: dicotyledon plants with woody stem including (but not limited to) oaks (*Quercus*), *Magnolia grandiflora*, hickories, (*Carya*), sugarberry or hackberry, (*Celtis laeigata*), red bay (*Persea borbonia*), spiny ash or toothache (*Xanoxylum clava-herculis*), sycamore (*Platanus occidentalis*), tupeolo (*Nyssa*), sweetgum (*Liquidamber styraciflora*), American holly (*Ilex opaca*).”

Even a cursory read of this definition shows that palms are **not** on the list of “Significant Trees.” That said, Staff cannot simply *assume* that Council inadvertently omitted palms from the definition – or that Staff can just interpret the ordinance as if palms *had been* listed. And although Staff today may be of that opinion, it is for Council, not Staff, to expand the definition of “Significant Tree” if Council holds that opinion.

B. Staff’s implied expansion of the list of defined “Significant Trees” is not justified by palms being listed *generally* among the significant tree *species and mitigation measures* in the Mitigation Schedule appended to the Tree Ordinance.

Under the plain language of the LDC, whether Significant Trees can be removed must be decided on a tree-by-tree basis. As shown above, LDC § 2-010 defines the term “Significant Tree.” The Mitigation Schedule at the end of § 7 of the ordinance does not do that; nor does it create an island-wide, species-wide regulation prohibiting removal of palms. Unlike the precision with which Council defined “Significant Trees” in LDC § 2-010, it did not expressly specify how the Schedule was to be applied – except in calculating mitigation measures. Therefore, the Mitigation Schedule is not nullified, or rendered inharmonious, merely by interpretatively relegating it as secondary to the primary definition in LDC § 2-010. [RL Canon 26 p.174]

Moreover, it seems obvious that the fact that the word “significant” (which was used as an adjective to describe species listed in the Mitigation Schedule) does not elevate

every tree on the island found in that Schedule to the status of a “Significant Tree.” Not only would that directly contradict the definition set out in LDC § 2-010, it would also force anyone seeking to remove a palm on Tybee to overcome the hurdles set out in LDC § 7-060 for removal of “Significant Trees” (e.g., *showing essentiality to the economic use of the property, no feasible alternative, zoning administrator written confirmation, tree replacement with Significant Trees, etc.*) That’s just not reasonable. Texts are properly interpreted when they reasonably serve their purpose in context. [RL Canon 37 (Absurdity Doctrine) p.234]

That said, given that the Mitigation Schedule contains many scientific names and specific calculations of mitigating tree sizes, it seems unlikely that Council (or even the City Attorney) drafted that Schedule. It appears pasted in.² And Council, itself, appears to have intended no purpose for the Schedule other than calculating mitigation measures. And even if one were to focus on the words “significant species” in the Schedule, those words only generally address “significance.” But, in interpreting an ordinance, where two provisions ostensibly address the same subject, but one is more specific than the other more general one, the specific provision is typically deemed to prevail. [RL Canon 28, p.183]

Consequently, because Staff appears to have relied solely on the presence of the word “significant” in the Mitigation Schedule – but disregarded altogether the specific definition of “Significant Tree” in LDC § 2-010 – Staff was mistaken. Its decision should be reversed by Council.

C. Finally, even if the tree at issue were mistakenly viewed as a “Significant Tree,” the applicant presents a credible and sufficient case for its removal.

First, his property has numerous other trees that would legitimately qualify as “Significant Trees” and they are unaffected by the removal of the palm at issue. *See* LDC § 7-060(B)(2)(“significant trees left remaining on the site may be counted as replacement trees according to the mitigation schedule.”). *Second*, the circuitous route that the family is forced to negotiate in order to enter or exit their garage create a plausible threat of property damage or even injury to a driver, particularly one challenged by the use of mirrors. *Third*, the palm at issue is immediately adjacent to several large “Significant Trees,” with the palm at issue nearly growing into their canopy. If removed, the palm at issue would not be missed. In short, the hardship imposed by denying the application outweighs any arguable benefit of requiring preservation of the tree at issue.

David Roberts, Member
Tybee Island Planning Commission

² Problems with Staff’s reliance on the presence of the word “significant” in the Mitigation Schedule are further highlighted by the facts that: (a) four of the ten or so species listed in LDC § 2-010’s definition of “Significant Tree” are not even found among species listed in the Mitigation Schedule; and conversely, only 6 of the 18 so-called “significant species” in the Schedule can be found in Council’s definition of “Significant Tree.”