

## Minutes of the City of Takoma Park Tree Commission

Sept 9, 2014

By Carol Hotton

Location: Atrium Room, 3rd floor, Takoma Park Community Center

Present: Linette Lander, Chair

Colleen Cordes, Vice-Chair

Carol Hotton, Secretary

Mel Fosnaught, Commissioner

Ken Sigman, Executive Director of Tree Commission

Meeting convened at 6:41 pm.

### Minutes

Minutes for May 13, 2014 were approved with minor corrections.

Minutes for Aug 12, 2014 were discussed and will be re-circulated for approval before next meeting.

### 1. Site visits for new construction

Linette's proposal to "always seek site visit in all new construction cases, and examine the potential appealable issues stemming from same to limit any harm [from] procedural errors" elicited lively discussion. Tree Ordinance currently allows for Tree Commission to decide during hearing that site visit is necessary and to notify all relevant parties of visit, to take place within 10 days of hearing. Linette noted that she didn't consider her proposal comprised making site visits mandatory.

Ken expressed his concerns about possibility of procedural error that could lead the City to lose an appeal in court, including: ensuring that all parties that have a right to be present are notified and present; complying with open meeting requirements; keeping an accurate record of testimony during a site visit; determining who said what, and what was observed by whom. Testimony given during a hearing is 'cleaner', according to Ken.

Linette and Colleen noted that photographs and building plans may be inadequate for visualizing a site, and don't always provide adequate context. Linette gave example of seeing lot in recent case after decision was rendered and expressing surprise at the small size of the lot and appearance of neighboring house.

Mel and Carol considered site plans, coupled with expert testimony, to provide adequate information to render decisions in most cases. Mel raised question of what precisely is to be obtained from a site visit that cannot be obtained from testimony. Linette replied 'context', but Mel and Carol considered expert testimony and site plans to constitute adequate context. No consensus was obtained on this issue.

Carol noted that facts of case were not evident until hearing, so it would be difficult to know what to focus on at site before testimony presented in hearing. Mel raised a similar point, in noting that current ordinance applies to 'disputed facts', which are unknown until hearing. Need specific facts in dispute to discover during site visit. Colleen suggested that Commission hold short meeting after testimony presented during a hearing to determine whether a site visit is considered necessary. This would enable Commission to notify parties at hearing that a site visit will be conducted.

Whether parties in tree hearing should be notified beforehand that site visit was possible/likely was discussed. The possibility that parties in hearing might deliberately force site visit by withholding evidence during hearing was raised. Concern was expressed over inadequate interval to schedule site visit in current ordinance (within 10 days of hearing) and a proposal was made to change to two weeks notice to parties for site visit. Ken will follow up on this.

Linette suggested that the option of a site visit, not necessarily routine and to be determined in course of deliberations, be formalized, as a supplement to other testimony. Ken not in favor of changing ordinance at this time, but suggested Commissioners consider what they expect to gather from a site visit and continue to discuss the issue. Linette and Colleen suggested informing parties of possibility of site visit, but Ken did not consider this to be necessary. **Action Item:** Commissioners will continue to discuss this among themselves.

#### Hearing introduction and FAQs.

Ken's role in drafting modifications to hearing introduction and FAQs on Tree Ordinance discussed. Ken will also provide examples of hearing decisions, along with an appropriate disclaimer, for posting. Colleen raised issue of privacy and suggesting redacting information such as name and address of plaintiffs before posting on the web. Although the decisions are a matter of public record, posting on web puts them out in a much more public way and opens them up to casual browsing, as opposed to purposeful searching. No final agreement was reached on this.

Note: Secretary will notify webmaster of changes to Tree Commission web site once changes have been completed and agreed upon.

Meeting adjourned at 8:20 pm.