



Date: October 6, 2014

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Joel V. Reitzer, General Services Director
Subject: Citizen Matter-Ralph Hunt, Jr. (104 E. Main St.)

Executive Summary

Mr. Hunt has requested the removal of two trees planted on City right of way in front of 104 E. Main St. The trees were installed per plans and specifications as elements of the downtown streetscape project, completed in 2008, and are in good form and condition. Options have been communicated to Mr. Hunt that based on the concerns expressed to us, he could file a liability claim against the City, or he could submit an administrative site plan that includes his proposed changes, and staff explained how to follow up on either option. To our knowledge, Mr. Hunt has not exercised either of these options.

Recommendation

The General Services Department recommends that at this time, the trees remain in front of 104 E. Main St, because they are not hazardous or unhealthy, and their removal would constitute a violation of the Unified Development Ordinance (UDO).

Background

On January 13, 2014, the City Manager asked the Urban Forestry Manager to have someone stop by 104 E. Main St. to inquire about a problem with the trees in the front of the building, communicated by Mr. Hunt to the Mayor the week before. The trees were described as causing "obstructions to their 2nd floor office building". The Urban Forestry Technician went to 104 E. Main St. and listened to Mr. Hunt articulate his concerns, which were that the trees drop leaves (which clog storm drains, create a slippery walking surface and blow into the building when the door opens) and that at least one of the trees interferes with the sewer line to his building. The Technician visually inspected the above ground portion of the trees, and proceeded to report to the Urban Forestry Manager Mr. Hunt's concerns as well as that the trees were well formed and did not require any pruning at this time. There were no holes open for him to inspect the soil profile for roots.

The City's Water and Sewer Maintenance Division received a service request for a sewer backup on January 13. They investigated and determined it to be a blockage in his lateral, and that there was no cleanout on it. Water Management staff shared with Mr. Hunt the City ordinance on sewer lateral responsibility and explained that the blockage was his responsibility based on the ordinance.

On February 6, the Urban Forestry Manager called Mr. Hunt to explain that his concerns about the trees were not actionable by the General Services Department because as required elements of the downtown streetscape, their removal would be subject to site plan approval through the City-County Planning Department, with consultation from other departments. Mr. Hunt seemed to want to file a claim for damages to his plumbing.

Street Maintenance replaced pavers where the hole had been dug to repair the sewer in April, 2014.

The General Services Department did not hear anything further about this request until September 25, 2014, when Deputy City Manager Ferguson asked for a brief synopsis of Mr. Hunt's concerns regarding sewer penetration and nuisance issues alleged to be a result of the trees' presence in front of 104 E. Main St, at which point he was updated.

Issues and Analysis

The trees in question are Trident Maples that were planted in April, 2007 as part of the downtown streetscape project. They are part of an overall formal design that specified various hardscape and landscape elements throughout much of the downtown sections of Main and Chapel Hill Streets as well as many of the connecting side streets. The streetscape design took into consideration steps to avoid potential conflicts with other existing infrastructure, incorporating a system of linking "root paths", which are trenches that were placed parallel to the right of way in an east to west orientation, to encourage root growth within them, in lieu of growing toward adjacent buildings. The trees will mature at a height of about twenty to thirty five feet with a spread of about twenty to thirty feet.

Mr. Hunt's plumber dug a trench in the sidewalk area that exposed a portion of roots. The Urban Forestry Manager examined the hole and found the location and density of the roots were not out of the ordinary for a tree of this species and age in the landscape. The roots appeared to be limited to the top two feet of soil, whereas the sewer lateral appeared to be at least three feet deep in the profile. In the soils in this area, tree roots do not typically penetrate below two feet. Staff does not dispute that Mr. Hunt was experiencing plumbing problems, but their observations do not support the conclusion that the tree was directly responsible or that removal of these public assets would alleviate his concern.

The trees have been pruned annually since 2010 to raise the understory of the trees as they grow taller and to correctively prune them for structural health.

This is not a typical tree removal request that could be evaluated solely by the City's Tree Removal Policy, an administrative policy of the Tree Ordinance in the City Code. The authority to remove does not rest with the General Services Department because the trees are elements of an approved streetscape design. Street trees, like many other elements, e.g. benches, receptacles, etc. are required by the Unified Development Ordinance in certain amounts (usually related to the linear amount of street frontage). There are no street tree planting waivers in this ordinance- there are only alternatives. The pertinent reference in the ordinance for the administrative site plan requirement is cited below:

3.7.3 Types of Site Plans

A. Administrative Site Plans

The approving authority is the Planning Director or designee.

1. Level 1

Criteria:

- a. Requires only Planning Department review with no change in stormwater management; or
- b. The improvements consist solely of streetscape alterations.

Alternatives

There are several alternatives that could be considered to resolve this issue:

- Mr. Hunt could file a general liability claim to the Risk Management Division for our third party claims administrator to evaluate. This information was previously provided to Mr. Hunt by the Urban Forestry Manager. Mr. Hunt did not exercise this option. It is unknown what conclusion would be drawn from their investigation.
- Mr. Hunt can submit an administrative site plan per the Unified Development Ordinance. This process would include all required site plan drawings, application and fee, at the applicant's expense. The outcome would not be known until the request was reviewed and evaluated.
- The City could be directed to remove the trees and restore the site to concrete sidewalk or Mr. Hunt could do so. This would be inconsistent with the City's Tree Removal Policy and violates the UDO without making a request for a design change.
- The trees could be transplanted/relocated by Mr. Hunt or the General Services Department. The trees would have to be hand dug and balled and burlapped on site to be transplanted. City staff is not experienced with this activity so it would be recommended for the work to be contracted. It is unknown at this time where it would be appropriate to relocate them. Completely removing them from the street frontage could constitute a violation of the UDO.

All alternatives are contingent upon approval by the City-County Planning Department through a site plan.

Financial Impact

Financial impact of a design change would require further study, but there could be many associated costs for: removal of the trees and the planting spaces, restoration of the site to sidewalk, and replacement of both the planting spaces and trees in an alternate location to be determined.

SDBE Summary

The item was not reviewed by the Department of Equal Opportunity/Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting