



Abilene Tree Board - Appeal Hearing Agenda
Abilene Public Library – Malott Room
209 NW 4th Street
November 3, 2020 – 5:30 pm

1. Call to Order
2. Roll Call: ___ Drew Snitker ___ Tim Strunk ___ Tony Whitehair
 ___ Chair John Barbur ___ Vice-Chair Steven Flynn
3. Approval of Agenda
4. Approval of Minutes – August 26, 2020
5. Business

Appeal Hearing, a request for a hearing to appeal Local Ordinance Violation – Complaint ID #2020-253, for the property addressed 419 NW 3rd Street by owner John Kollhoff, Rural Rental LLC.

6. Comments
7. Adjournment



Abilene Tree Board Meeting Minutes
Abilene Public Library – 209 NW 4th Street
August 26, 2020 – 5:30 pm

Members Present: John Barbur (Chair), Steve Flynn (Vice-Chair), and Tim Strunk

Members Absent: Drew Snitker and Tony Whitehair

Staff Present: Jennie Hiatt

Others Present: none

Call to Order

The meeting was called to order by Chair Barbur at 5:35 pm.

Approval of the Agenda

Flynn made a motion to approve the agenda with the addition of tree survey discussion. The motion was seconded by Strunk. Motion carried unanimously. (3-0)

Approval of the Minutes from the February 25, 2020 Meeting

Flynn made a motion to approve the minutes as written. The motion was seconded by Strunk. Motion carried unanimously. (3-0)

Business

1. 2020 Budget

There was discussion regarding the remaining 2020 budget and the effect that COVID has taken on the Arbor Day activities that would normally have taken place.

Strunk made a motion to let \$2,800 of the Tree Board's budget go back to the general fund. The motion was seconded by Flynn. Motion carried unanimously. (3-0)

2. Cost Share Program

There was discussion regarding the revamping of the current cost share program. Some of the suggestions were to introduce a new cultivar each year, seeing if Lumber House would be able to offer the trees or maybe Abilene High School could help as a FFA Forestry Project.

It was determined to continue discussing the cost share program at future meetings.

3. Arbor Day Poster Proclamation

There was discussion regarding the proclamation.

Flynn made a motion to approve having the Arbor Day Proclamation take place in the month of October. The motion was seconded by Strunk. The motion carried unanimously. (3-0)

4. Tree Survey Discussion.

There was a lengthy discussion to come up with a system somehow to finish the tree survey. Some of the options discussed were generating the data into a spreadsheet, taking handwritten notes, and checking to see if there would be a way to get the GPS Coordinates for each tree.

It was decided to see if John Steiner would be able to attend the next meeting to discuss how the Midland GIS system works if possible.

Comments

There was discussion regarding holding a meeting on September 29th to discuss the Tree Survey with John Steiner, along with getting an orchard update from Tony.

Adjournment

Flynn made a motion to adjourn the meeting. The motion was seconded by Strunk. Motion carried unanimously (3-0), and the meeting was adjourned at 6:45 pm.

Attest:

Jennie Hiatt
Administrative Assistant

Minutes Approved,

John Barbur, Chair
Steve Flynn, Vice-Chair



Memorandum

To: Tree Board

From: Jennie Hiatt, Public Works Administrative Assistant

Date: October 24, 2020

Subject: 419 NW 3rd Street – Tree Board Hearing

Background:

On October 2, 2020, a Notice of Violation was mailed via certified mail to Rural Rental, LLC in connection with a violation of Abilene City Code Section 6-704. The violation arises from two (2) trees that are hanging over the sidewalk and street abutting the property owned by Rural Rental, LLC at 419 NW 3rd Street. The correction notice stated that the property owner is in violation of Abilene City Code Section 6-704, and to remedy the violation, the hanging limb and branch growth must be maintained to 8 feet above sidewalk and 14 feet above street. All tree limbs and branches must comply with these regulations.

As background, Kansas statute authorize cities to regulate the planting, maintenance, and removal of trees upon the public right-of-way. Specifically, K.S.A. 12-3201 states:

12-3201. Trees and shrubbery on streets and alleys; regulation; costs, special assessment. The governing body of any city is hereby authorized to regulate, by ordinance, the planting, maintenance, treatment and removal of trees and shrubbery upon all streets, alleys, avenues, boulevards and public rights-of-way within such city. Upon the failure of the owner of property abutting streets, alleys, avenues, boulevards and public rights-of-way to comply with such regulations, and after reasonable notice the city may trim and maintain or, where necessary, remove such trees and shrubbery and assess the costs of such work against the abutting property as a special assessment.

Pursuant to this statutory authorization, the Abilene City Commission has adopted an ordinance to regulate trees in the public right-of-way, which is codified in Chapter 6, Article 7 of the City Code. Section 6-704 reads as follows:

Property owners shall have the duty at their expense to remove, prune, and care for trees and shrubs on any abutting street right-of-way, alley or sidewalk in accordance with the provisions of this article and the rules, regulations and specifications promulgated by the Tree Board and approved by the Governing Body.

The City Tree Board approved the certain City Forestry Standards and Specifications on January 10, 1996, and the Standards and Specifications were adopted by the City Commission on April 29, 1996 under Ordinance No. 2786. The approved City Forestry Standards and Specifications require that all hanging limb and branch growth be maintained to 8 feet above sidewalks, and 14 feet above streets.

Pursuant to Section 6-713, any notice given by the City Forester pursuant to this article shall allow at least five (5) days to the property owner to perform the work required after the time the notice is served on the property owner. During such period the property owner shall have the right to appeal the order of the City Forester to the Tree Board by filing with the Tree Board a notice that said property owner desires to appeal from such order. Such appeal shall be submitted in writing to the Tree Board within five (5) days from the date of the order. If any property owner files a notice of appeal with the Tree Board, the Tree Board shall schedule a hearing of the Tree Board to consider such appeal within ten (10) days. Until a final determination by the Tree Board work required to be done by the City Forester shall not be required. If the Tree Board sustains all or any part of the order of the City Forester, it shall set the time within which the work required to be done shall be done. In hearing any appeal from an order of the City Forester, the Tree Board may on its own motion, or if so, requested by any property owner, augment its membership by not more than two (2) additional licensed foresters or arborists who shall have voting privileges at the hearing.

On October 15, 2020 John Kollhoff, with Rural Rental, LLC, called and left a message for Community Service Officer, Michael Ragsdale and stated "It looks like you cited for property that does not belong to me, my property is only the paved portion of that area, that is not my property. So, I'll be happy to go to a hearing, if that's what we need to do, but that is not our property and not our concern." On October 16, 2020 John Kollhoff, Rural Rental, LLC, emailed City Inspector, Travis Steerman and gave notification for a request for a hearing.

Action:

Following presentation of all information relevant to the appeal hearing by City staff, the property owner, and any interested parties or members of the public, the Tree Board should deliberate and, by majority vote, state its findings of fact and its conclusion to either uphold or deny the appeal and make any other orders it deems warranted by the circumstances and applicable law.



**CITY OF ABILENE COMMUNITY
DEVELOPMENT DEPARTMENT**
P.O. Box 519 | Abilene, KS 67410 | 785-263-2550

NOTICE OF LOCAL ORDINANCE VIOLATION

October 02, 2020

PROPERTY OWNER:

Rural Rental, LLC
100 Xavier Dr.
Abilene, KS 67410

COMPLAINT ID #: 2020-253

**PROPERTY IN
VIOLATION:** 419 Nw 3Rd St
Abilene, KS 67410

PARCEL NUMBER: 021-115-16-0-30-36-004.00-0

Dear Sir/Madam:

VIOLATION: The owner of the aforementioned property is being cited for violation of the City Code as follows:

Trees - Chapter 6, Section 704 (Duties Of Adjoining Property Owners)

Property owners shall have the duty at their expense to remove, prune, and care for trees and shrubs on any abutting street right-of-way, alley or sidewalk in accordance with the provisions of this article and the rules, regulations and specifications promulgated by the Tree Board and approved by the Governing Body.

REQUIRED CORRECTIVE ACTION: The property owner or agent of the property shall remedy the aforementioned violation(s) as follows: ***Hanging limb and branch growth shall be maintained 14 feet above streets and 8 feet above sidewalks. All tree limbs and branches must be trimmed to comply with these regulations.***

DEADLINE: The property owner or agent of the property has ten (10) days from the date of the notice to remedy the violation or request a hearing as provided in the violation notice accompanying this correction order. The violation shall be remedied by 10/12/2020 unless a hearing is required.

If you have questions about the information provided in this Correction Order or the accompanying Violation Notice, please contact:

Michael Ragsdale
Community Service Officer
(785) 263-1213

Article 7. Trees

6-701. City forester.

The position of "City Forester" is hereby established, with the powers and duties hereinafter specified. The powers and duties of the City Forester as specified herein may be vested in the City Inspector or in such other person or persons as designated by the City Manager. The City Forester shall have the power to administer and enforce the provisions of this Chapter and the rules, regulations and specifications promulgated under Section 2 hereof. The City Forester is authorized enter upon the property in the City for the purpose of inspecting trees, shrubs, and other plants.

6-702. Standards and specifications.

The Tree Board shall promulgate rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right- of-way of any street, alley, sidewalk, or other public place in the city. Such rules, regulations and specifications promulgated by the Tree Board shall be consistent with any plan adopted by the city for the care, preservation, pruning, planting, replanting, removal or disposition of trees, shrubs and hedges in parks, along streets and in other public places in the city, shall be in writing and shall not be effective until approved by the Governing Body. Copies of such rules, regulations and specifications shall be available to the public through the office of the City Clerk.

6-703. Permit.

No person or firm shall plant, prune, remove or destroy any tree, shrub or hedge along streets and in other public places in the city without first obtaining a permit from the City Forester. Such permits shall be issued without cost to the applicant. Applications for such permits shall be available in the office of the City Clerk and shall include such information as the City Forester may require. The applicant shall as part of the application agree to save the city harmless and indemnify the city from all claims and damages in connection with the planting, pruning, removal, or destruction of any tree, shrub or hedge pursuant to the permit.

6-704. Duties of adjoining property owners.

Property owners shall have the duty at their expense to remove, prune, and care for trees and shrubs on any abutting street right-of-way, alley or sidewalk in accordance with the provisions of this article and the rules, regulations and specifications promulgated by the Tree Board and approved by the Governing Body.

6-705. Pruning.

It shall be unlawful to "top" or pollard a tree growing upon the right-of- way of any street, alley, sidewalk or other public place in the city, except where necessary to prevent encroachment into transmission lines.

6-706. Obstruction.

It shall be unlawful to plant or cause to be planted any species of tree on the right-of-way of any street, alley, sidewalk or other public place within the City which by its habit of growth would obstruct, restrict or conflict with necessary and safe use of the public right-of- way.

6-707. Violations.

It shall be unlawful to plant, prune, remove, destroy or cause to be planted, pruned, removed or destroyed any tree, shrub or hedge in violation of any standards, rules, regulations or specifications duly promulgated by the Tree Board and approved by the Governing Body.

6-708. Rights of city.

Nothing in this article shall prevent the city, upon recommendation of the City Forester, from planting, pruning or removing any tree, shrub or hedge from the right-of-way of any street, alley, sidewalk, or other public place in the city.

6-709. Prohibited species.

It shall be unlawful to sell or import into the city or to plant or cause to be planted within the city limits any of the following species of trees:

- (a) Any cotton bearing cottonwood tree (Genus Populus)
- (b) Any box elder tree (Acer Negundo)

(c) Any other tree prohibited by rule or regulation duly promulgated by the Tree Board and approved by the Governing Body

6-710. Removal of hazardous trees.

It shall be the duty of the owner of any property at such owner's expense to remove any dead or dying trees or dead or dying limbs dangerous to life, limb, or property when located upon the premises of such owner or upon any abutting street right-of-way, alley or sidewalk whenever required to do so by notice given by the City Forester served upon the owner of such property in accordance with this article. Such work shall be performed within such time as may be specified in such notice.

6-711. Control of disease or infestation.

Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth, health, life or well-being of trees or plants in the city, or which is capable of causing an epidemic spread of communicable disease or insect infestation such as Dutch Elm disease, the City Forester shall at once cause written notice to be served in accordance with this article upon the owner of the property upon which such diseased tree is situated, which notice shall require such property owner to eradicate, remove or otherwise control such conditions within such time as may be specified in such notice.

6-712. Notice.

Any notice authorized in this article may be served by delivering a copy of such notice to the record owner of such property or by leaving a copy of such notice at such owner's usual place of abode with some member of his family over the age of eighteen (18) years. In the event that there is more than one owner of property, service upon any owner shall be adequate service upon all co-owners. If the owner of any property cannot be found in the city, service may be made by mailing a copy thereof to such owner postage prepaid, certified mail, addressed to the last known address. Service by mail shall be completed five (5) days after the date the notice is deposited in the mail and posted on the premises.

6-713. Appeals.

Any notice given by the City Forester pursuant to this article shall allow at least five (5) days to the property owner to perform the work required after the time the notice is served on the property owner. During such period the property owner shall have the right to appeal the order of the City Forester to the Tree Board by filing with the Tree Board a notice that said property owner desires to appeal from such order. Such appeal shall be submitted in writing to the Tree Board within five (5) days from the date of the order. If any property owner files a notice of appeal with the Tree Board, the Tree Board shall schedule a hearing of the Tree Board to consider such appeal within ten (10) days. Until a final determination by the Tree Board work required to be done by the City Forester shall not be required. If the Tree Board sustains all or any part of the order of the City Forester, it shall set the time within which the work required to be done shall be done. In hearing any appeal from an order of the City Forester, the Tree Board may on its own motion, or if so requested by any property owner, augment its membership by not more than two (2) additional licensed foresters or arborists who shall have voting privileges at the hearing.

6-714. Compliance.

It shall be unlawful for any person to fail to comply with the requirements of any notice given pursuant to this article within the time specified in such notice.

6-715. Penalties.

Upon conviction of a violation of any provision of this article, a fine in an amount of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) shall be assessed by the Municipal Court.

6-716. Costs.

If any work required under this article is not accomplished within the time specified in the notice, the City Forester shall cause the work to be done and the cost of the same shall be collected from the property owner. Any notice given pursuant to this article shall state that if the work required is not done within the time specified, the city will cause the same to be done at the expense of the property owner. If the City Forester causes the work to be done, the City Forester shall submit the cost thereof to the City Clerk, who shall send a statement in such amount to the property owner at the owner's last known address. Any such statement shall be paid by the property owner within thirty (30) days after the statement is so mailed.

6-717. Assessment.

The City Clerk shall, at the time of certifying other city taxes to the County Clerk, certify the costs for work done by the city, which have not been paid by the property owner.

6-718. Costs in addition to penalties.

The imposition of any penalty for a violation of any provision of this article shall not be construed as a waiver of the right of the city to collect the costs of removal or treatment of any tree, shrub or other plant in accordance with the provisions of this article.

6-719. Registration.

No person or firm shall engage in trimming, pruning, treating, or removing trees for consideration within the City, unless such person or firm shall first register with the City Clerk. The City Clerk shall issue the registration to an applicant upon the completion of the registration form and acknowledgment that the applicant is familiar and agrees to comply with the rules and regulations of the City. Registration shall expire on December 31 of the year the registration was issued. Upon conviction of any provision of this Section, a fine in an amount of not less than \$50 nor more than \$500 shall be assessed by the municipal judge. In addition to the penalties provided above the registration of any person or firm violating any provision of this Section shall upon conviction be revoked. Such person shall not be eligible to reapply for registration for one (1) year from the date of the conviction. Upon conviction of a second violation, such person or firm shall not thereafter be eligible to apply for registration.

419 NW 3rd St.

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