

Chapter 72 – Tree Ordinance

ENRAC COMMENTS

Chapter 72

Page 1, Lines 6-10:

(Melissa Lammers) We know more now than we did years ago. Consider incorporating in some form that trees:

- Help reduce urban heat islands (perhaps add to #7)
- Are an essential component of biodiversity (consider add to #8)
- Sequester carbon, acting as a sink for carbon dioxide by fixing carbon during photosynthesis and storing carbon as biomass.
- Contribute to reductions in crime (perhaps encompassed in #9)

Page 1, After Line 20: They only increase the economic value of low density development. They decrease the value of high density development because if preserved, they reduce the allowable density. (Bill Lites)

Page 1, After Line 21: add language similar to: “Old growth, historic trees and forests store more carbon than younger, smaller trees, support more biodiverse ecosystems, help purify more water, are required for some important wildlife species, and provide numerous other benefits not directly quantifiable and should be protected to the best of our ability” (Alex Zelenski)

Page 2, Lines 37-46:

- I did not research all the publications listed here for the generally accepted definition of “nuisance trees” nor could I find it in the ordinance. I think we should either; define this term in the ordinance or provide a single reference that’s generally accepted. This may also be the section to refer to the current legislation that allows for removal of trees determined to be a “risk” and provide a definition or reference. (Bob Fitzsimmons)
- Suggest adding a list of invasive species. (Bliss Jamison)

Page 2, Line 45: Cites as authoritative reference for invasives as the Florida Exotic Pest Plant Council List of Invasive Species whereas under Definitions, the citation is Florida Invasive Species Council List of Invasive Species. Needs clarification throughout Chapter 72. (Melissa Lammers)

Page 3, Lines 75-84: Section appears to say that all trees on residential owner-occupied property are exempt (no permit needed for clearing). As land (habitat) becomes more fragmented, trees on residential lots are increasingly important to preserve biodiversity. (a) This needs discussion. I currently favor “Historic trees located on residential owner-occupied property as defined in section 72-2, [as being] ***not*** exempt from the requirement of this division” and (b) how would this align with state law? (Melissa Lammers)

Page 3, Lines 82 & 83:

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- I could support the removal of this exemption provided we include something about “risk” analysis that could permit the removal on owner-occupied property (Bob Fitzsimmons)
- Yes, historic trees should be removed from the owner-occupied exemption. (Alex Zelenski)
- No, historic trees should remain exempt (Bill Lites)

Page 3, Line 82:

- Revise to allow exemption on all single family homes (regardless of occupation) or remove. Consider including exemption from tree removal permit fees for affordable housing? (Jessica Gow)
- Historic trees should not be exempt from residential owner-occupied property. (Jack Surette)

Page 3, Lines 84–87: Many of you may be aware of the project that’s brought this inequity to my attention. This paragraph exempts property that is used agriculturally but does not mention properties that were previously used for agricultural purposes but have since been abandoned. Specifically, ferneries or nurseries that plant trees for shade or to sell are not exempted. When these pursuits are abandoned these planted trees become ‘protected trees’ but they do not represent a naturally treed area. Instead, they are usually a monoculture and may not be very desirable. These trees should either be exempted or replaced at a much lower threshold. (Bob Fitzsimmons)

Page 3, Line 88: Should be no more than 1 year. It is an imposition on the landowner and makes it so you cannot use the land. (Bliss Jamison)

Page 3, Lines 89-91: Discuss appropriate time period. The benefits of trees should ideally be preserved until conditions from lines 93-98 are imminent (second hearing?) or met, not an arbitrary time period. The development requirement that no more than 20% of a lot can be cleared each year reflects the benefit to preserving trees for as long as possible, even when slated for removal. (Melissa Lammers)

Page 3, Line 90:

- Unfortunately, we’re always going to have people who try to circumvent the rules. The trick is to not handicap the conscientious ones. I could support 5 years. (Bob Fitzsimmons)
- Keep 3 year period (Jessica Gow)
- I recommend a five-year period. I recognize that developers might hold property for considerably longer, but I don’t think avoiding tree requirements is a primary reason. (Jack Surette)

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- Based on review of Google Earth aerial imagery with consideration to development projects currently being permitted, and development projects that are “on the horizon” I believe the rebuttable presumption timeline should be increased between 10-20 years. Land clearing and site preparation for lots that are developing/being built out today started between 2005-2010 while those lands were under various agricultural exemptions. (Alex Zelenski)
- 3 years is plenty long of a lookback period. Most developers/planners take much less time (1 year) to plan and permit to develop a site. If you increase this too much, then agricultural owners may start removing trees just as a preventive measure. (Bill Lites)
- Should be no more than 1 year. It is an imposition on the landowner and makes it so you cannot use the land.

Page 4, Line 117: seems to be a wrong reference (Bill Lites)

Page 4, Lines 129–131: Why is staff recommending this to be deleted? (Bob Fitzsimmons)

Page 4, Lines 130-132: This language was struck out and replaced with language in lines 128-129, however, the original language clarifies that the goal (of the permit) is to preserve historic trees, which is consistent with the intent of the Chapter. Would like to see some of this language added back. (Melissa Lammers)

Page 5, Line 145:

- I support this and making a change to Chapter 50 (Bob Fitzsimmons)
- Need to add Trees exceeding federal obstruction standards. (Bliss Jamison)
- Need to refer to airport hazard zoning ordinance which has had revisions and has been adopted. Need to make sure it all works together. (Bliss Jamison)
- 147-151 – Are these underlined exemptions that will need a Chapter 50 change? Or new exemptions beyond these? (Bill Lites)

Page 147-150: I do not want to see road projects exempt from tree preservation requirements, including contributions to the tree mitigation fund. Thinking specifically about the extension of Williamson and other roadways to support the build out of the mostly forested South East Volusia County. (Alex Zelenski)

Page 5, Lines 148-151: Does County have to cede any/all oversight of this? Discuss (Melissa Lammers)

Page 5, Lines 162-166:

Melissa Lammers writes:

Applies to land to be cleared rather than an owner-occupied residential lot. Going back to desirability of preserving trees vis a vis habitat fragmentation, and knowing County works with landowners to help relocate a planned building (example) to avoid impacting

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a tree, it seems at minimum, same consideration should be given to historic trees on owner-occupied residential property and perhaps also to specimen trees. Same question re effect of state law applies here.

At the outset, Chapter 72 lists all the benefits to health and well-being that trees provide. Subsequently, language focuses on all the conditions that allow for removing trees (recognizing this section is about land clearing). However, DeLand's language is very clear on intent---to preserve as many trees as possible rather than simply list conditions for issuance of a permit allowing removal (which would be consistent with the stated reasons for the Volusia County tree ordinance). DeLand arrives to the same destination but perhaps gets there in a more focused manner. See [quote] below.

[NOTE – this is more understandable in the language for review, Sec. (old) 72-840/(revised) 72-836]

“Permit applications. Any person who is required to obtain a Tree Removal Permit shall submit an application to the building department on a form to be supplied by the city. A tree survey and a written statement indicating the reasons for removal, relocation or replacement of trees shall accompany every application. The applicant must demonstrate to the satisfaction of the city forester that a reasonable effort has been made to situate the improvements so as to save as many of the existing trees as possible and to work with the existing grade to the greatest extent possible. Tree protection barricades must be in place prior to the issuance of the permit.”

Page 6, Lines 177–182:

- I understand that Land Surveyors are not trained to identify tree species. I would suggest using a State Certified Land Surveyor and have the arborist, Landscape Architect, etc. sign off on the tree ID's. This could save a considerable amount of money. I like the staff change to number the trees! (Bob Fitzsimmons)
- This excludes many disciplines that know how to do tree surveys, sometimes better than Landscape Architects. Like ecologist, biologist, environmental engineer, and surveyors. Landscape Architects are not registered but have been doing LA work for a long time. This language can really slow down a project (Bill Lites)

Page 6, Lines 177-196: For discussion. Seems clear and thorough as-is however a significant portion of the public would like to know why, given the requirement to identify all the trees with the idea of preserving a number of them, we have massive clear-cutting. (Melissa Lammers)

Page 6, Lines 197-209: Same question as above. Why incur the time and expense of these surveys if clear-cutting will take place? (Melissa Lammers)

Page 6, Lines 196–208: In my humble opinion this is an attempt at 'one size fits all' and there is little added value to the end product. If we must have detailed regulations at this level, and I

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don't think we do to accomplish our goals, they need to be ranged by lot size. For example, on a 50' X 100' lot utilizing the maximum impervious surface allowable there is barely enough room to comply with the 1 tree/2500 sq. ft. and follow Best Practices for tree spacing. A quarter acre lot doesn't fare much better when you add a septic system in to the mix. If you do save some trees on a typical homesite there's no way to comply with Standards for Tree and Root Protection required in this ordinance. We need to come up with a solution that preserves or plants an abundant number of trees in areas where they can thrive and isn't just being punitive by adding more cost to the home. (Bob Fitzsimmons)

Page 6, Line 204: Even if you don't need a permit you need to apply for a certificate of compliance and get an inspection by the county? The county is already notoriously slow to review permits and reviews them in a piecemeal fashion with several rounds of review. (Bill Lites)

Page 7, Line 231: A person should be able to do statistical tree survey even for both protected and specimen trees. This section already says the site should be uniform so you would collect a representation of the specimen trees also. (Bill Lites)

Page 7, Line 247: Tree permits should last for more than 1 year because a lot of things can slow down a building or land development> If the tree survey expires do you have to do the surveys all over again? And tree surveys are very expensive. So there should be a mechanism to renew a tree survey (with a growth coefficient maybe) so that if a permit expires and need to be renewed, it can be without redoing the tree survey. (Bill Lites)

Page 7, Line 251: Why? Hasn't the forester already done site visits and issued the permit? (Bill Lites)

Page 8, Line 257:

- I think the standards for NRMA and ECO could be somewhat higher. Or perhaps the NRMA and ECO requirements should be expanded to larger areas of the county. Other members of the committee have a stronger working knowledge of these specifics and minimum tree requirements. I will be most interested in their recommendations. Another thought is to expand the percentage to 20%, but remove the minimum 30 feet width requirement. This type of flexibility may preserve more greenspace while allowing more efficient construction methods. (Jack Surette)
- Add language allowing for clustering of 15% within overall development but outside of individual lots in order to promote preservation of larger open spaces tracts to promote habitat preservation. (Jessica Gow)
- 15% sq ft requirement already seems to cause some grief within the community. I would not increase this at this time. NRMA and ECO both should have graduated protections due to their importance within Volusia County land use decisions. The following are

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potential graduated protection for the overlays: NRMA Only: 20%, ECO Only: 25%, NRMA and ECO both – 30% (Alex Zelenski)

- For infill it should be smaller because every lot/unit/sq. foot you don't add into the infill area, you will need to put in the greenfield. Maybe larger for NRMA and Eco, but there are already other constraints in NRMA/ECO that make it hard for people to use their land. (Bill Lites)

Page 8, 257-259:

- For perspective, the current subdivision I have under review, Heebner Acres, had an acquisition cost (land only) of \$1.2M. It's 47 acres and there will be 29 one-acre home sites. The 15% tree preservation area set aside costs alone increased the land cost for each eventual homeowner by \$6,200. This is before any compliance costs for tree mitigation. Affordability starts in the regulatory environment. This is, in part, some of my reasoning why all native trees in these areas should count towards replacement requirements. (Bob Fitzsimmons)
- Trees protected in required landscape buffers should NOT be included in the calculation of 15% of the area of protected trees. In areas where a 25' or 30' buffer is the minimum requirement, this allowance barely provides enough width for meaningful tree preservation. A single row of (possibly sparsely distributed) trees is not adequate for meaningful preservation in terms of either the health of the trees or the preservation of ecologically functional patches. They are all "edge" habitat. The tree preservation needs to be concentrated in areas of clustered trees to provide habitat with "interior" habitat, and those clustered tree preservation areas are most functional if they are connected to the corridors provided by the trees in the landscape buffer. (Wendy Anderson)

Page 8, Lines 258-260:

As per discussion at 12/7 meeting, is a percentage the right way to go? I would like group to discuss this. If percentage of land is the best way to go, then the language could be clearer.

Currently reads: *(a) Fifteen percent of the square footage of any development shall be designated for the protection of existing protected trees *within tree preservation areas [underlined content]* [is underline redundant?]. The area required to protect specimen trees may be included to satisfy this requirement.*

Is this trying to say that there is 15% of sq footage must be a tree preservation area to protect existing "protected" trees but the area to protect specimen trees can count toward the 15% requirement?

Re increasing in ECO and NRMA: that would be consistent with the intent of those overlays and therefore, I would be in favor. (Melissa Lammers)

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Page 8, Line 262: Why not allow the % for tree preservation to count towards common open space? Could make a goo informal “park”. (Bill Lites)

Page 8, Line 261-265: Again, hard to follow: [Quote:] *(b)This required area may be constituted as one or more subareas within the development. For subdivisions concurrent with a development order, the required area shall be placed in one or more tracts separate from individual building lots and shall not be utilized to meet common open space requirements. Said area may include any landscape buffer or other landscape buffer or other landscape areas required by...*

By including landscape buffer as part of the 15%, does this not potentially reduce the area for trees? DISCUSS. (Melissa Lammers)

Page 8, Line 271:

- No suggestion to change this language. However, I would like to add to Chapter 72 more requirements specific to the removal Brazilian peppers (*Schinus terebinthefolius*) from all property being developed. This invasive species (more intrusive than all others listed) currently occupies over 700,000 acres of Florida and is terribly damaging to our environment. This may not be the place to address this ecological problem. (Jack Surette)
- Why make people remove their exotics? The County/state don’t even remove exotics in some cases. (Bill Lites)

Page 8, Line 271-274: I am a big proponent of efforts to eliminate all invasive plant and animal species in Florida through my support of individual and group endeavors. I believe it morally reprehensible to put the burden of this noble cause on a minority of the citizenry. You’re proposing that only new-build homeowners bear a disproportional cost without any credit for doing so.

Things like this are a societal problem and should be proportionally borne by everyone without discrimination. Volusia County is at an all time high for annual home building and it still only represents 2.5% of the total homes in Volusia County. I cannot in good faith support this addition to the code. (Bob Fitzsimmons)

Page 8, Line 272-275: Is definition of “native vegetation” specified somewhere? (Melissa Lammers)

Page 8, Line 281:

Two issues:

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- 1) What happens with projects that are large warehouses or box stores with large footprints for buildings and parking lots? Can this requirement be met with the 15% tree preservation set-aside?
- 2) The practice of sticking a single tree all of the same species in each yard on residential developments limits biodiversity and the complex ecological functions that multi-species groupings provide. Specifications on placements of trees, e.g., planting trees a safe distance from buildings, sidewalks, and roads would be useful. If a lot cannot safely accommodate a tree because of the lot's size, shape or size of the building, then the trees should be planted elsewhere on site, preferably in multi-species clusters.
(Wendy Anderson)

Page 8, Line 285-287: Re waiver: to discuss (there are obvious pros and cons) (Melissa Lammers)

Page 9, Line 291-293: All trees preserved in separate tracts should be counted towards replacement. (Bob Fitzsimmons)

Page 9, Lines 297-301: Same as previous comment. (Bob Fitzsimmons)

- How long are exotics required be removed? (Bill Lites)

Page 9, Line 299-302: Where is “native vegetation” defined and who is responsible for plant identification on-site? Is there a lot size limit to this? I see total removal all the time. (Melissa Lammers)

Page 9, Line 315-316: This needs to be spelled out. Nearly every tree removal will lead to increased runoff and environmental degradation. How much runoff is OK? How much degradation is allowed? The evaluation should be site dependent. If the site has a significant grade, runoff and erosion are higher risk than flat sites. If the site runs off into a natural body of water (lake, river, lagoon, beach) the removal of trees will have a much bigger impact than if it runs off into something else like a stormwater pond or an intact natural area of land. (Wendy Anderson)

Page 10, Line 326: Addition of grading impact to adjoining property – yes, include (Melissa Lammers)

Page 10, Line 345-347: Please explain the intent of these changes. (Bill Lites)

Page 10, Line 362-363:

- Is “hardship” too vague? (Melissa Lammers)
- What is the threshold for % of reduction in profits to warrant permitting of clear-cutting? How are profits calculated? Does it take into account the fact that homes with mature trees on or adjacent to the lots sell for high prices than homes without mature trees? Or is it simply acknowledging that developers have to spend a little more on the

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front end to work around trees, even though they likely recoup their costs on the back end when they sell those higher quality lots with big trees? (Wendy Anderson)

Page 10, Lines 364-366: Please explain the reasoning for this. (Bob Fitzsimmons)

Page 11, Lines 368 – 396: What is the intent of these additions? (Bill Lites)

Page 13, Lines 441-475: Why is all this language being removed? (Bill Lites)

Page 14, Line 485-488: Is there a reference for “native trees”? Is there no requirement (time period, bond) to assure a tree for which developer received credit was adequately protected during clearing and construction? (Melissa Lammers)

Page 14, Lines 500- 516: Why remove the ability to replace trees with any palms at all? Has this been a problem in the past? (Bill Lites)

Page 16, 543-554:

- Can County staff provide actual numbers of the frequency of this offence? If we’re looking at 10% of the homes being offenders, I would be hard pressed to justify the effort it’s going to take to go back and inspect every home (currently about 6,800 per year). It would require a significant increase in staff and not much reward. I would support striking this entire section unless there is data to support the need. (Bob Fitzsimmons)
- Perpetuity is along time. This will cause the “end user” to have to monitor and replace trees as they die of old age, disease, storms. 2 years seems reasonable. Even retained trees in a tree preservation area? It says the county forester will monitor that? Will you or your staff visit every site 2 years later? (Bill Lites)

Page 16, Line 559: How is the money in the tree replacement trust account spent? We even pay into this account for NRMA buffer impacts under the wetland altera permit process. (Bill Lites)

Page 16, Line 560: Does this fee schedule currently exist? (Bill Lites)

Page 16, Line 564: What if they can’t be because they are stand alone? (Bill Lites)

Page 16, Line 569: Replace the word “hazard” with the word “risk”. Not sure if this needs to be addressed throughout to be more in line with the new law (as I understand it). (Bob Fitzsimmons)

Page 17, Line 594:

- I want to save as many ST’s as possible and believe that’s the committee’s desire. The problem that arises when you can’t save the required number of ST’s is a monetary one. The replacement cost is currently \$52.00/cssi. The removal of one 24” tree would require a payment of \$529.00 to the County and add no value for the homeowner or the community from which the money was extracted. Do we just want to increase the cost

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of doing business or are we interested in creating beautiful & sustainable communities?
(Bob Fitzsimmons)

- a potential waiver could be 1) a 5% increase in additional tree preservation area, 2) tree preservation areas designated in an in-perpetuity conservation easement, 3) 10-20% increase in onsite tree replacement, or 4) the canopy of tree replacement grows in such a way that 50-75% of the parcel area remains under forested canopy (Alex Zelenski)

Page 18, Line 623: new language states that the tree protection zone is “approximated by one foot per inch of tree diameter” – this seems very large. I would suggest a revision to a standard dimension. (Jessica Gow)

Page 18, Lines 636-643:

- Why does staff think these changes are necessary? (Bob Fitzsimmons)
- These absolutes can cause problems and the forester has a lot of power just to deny creative solutions (Bill Lites)

Page 18, Line 636: Revise “No grade changes are to be allowed within the drip line of existing trees unless approved by the county forester.” – same issue as tree protection zone – very large. Can we add a ratio of grade changes? Exemption for pervious materials? (Jessica Gow)

Page 19, Line 681-682: [Quote:] *“Immediate notification to the county. The county forester must be notified immediately ***after any damage to any tree damaged*** by construction operations.”*
Is this redundant? (Melissa Lammers)

Page 20, Lines 1-9: Why remove this language/opportunity? (Bill Lites)

Page 20, Lines 19: has this happened before? (Bill Lites)

Page 20, Lines 20: Can this money be used to pay for additional inspectors? (Bill Lites)

Page 21, Lines 39-50: I may just be getting cross eyed. Your comment on line 38 said portions of this section were moved but I couldn’t find the residential exemptions on lines 46-50. Please clarify. (Bob Fitzsimmons)

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Definitions

Page 1, Line 2: Expand the definition to include previously agriculturally used land like ferneries & nurseries. (Bob Fitzsimmons)

Page 1, Line 15&16: For my own education, please confirm that cited divisions are division 11 - wetland alteration permits and 17 – gopher tortoise protection. (Code of Ordinances > Chapter 72 > Article III > Division 11 & Division 17). If not, please provide direction to location for review (Melissa Lammers)

Page 1, Line 17: Is this asking for addition of a definition of County Forester? (Melissa Lammers)

Page Line 28 – add clarification on actions that impact greater than 25% of the root system are classified as effectively destroying.

Page 2, Line 46: I think we should go for somewhere between 28-32. Long leaf pine should be included due to imperiled nature of old growth LL pine within the state of Florida. (Alex Zelenski)

Page 2, Line 45-51: Re Addition of longleaf pine (*Pinus palustris*): Need data to correlate DBH to age (as noted at 12/7 meeting) Consider adding Sand Live Oak (*Q. geminata*) along with appropriate DBH (Melissa Lammers)

Page 2, Line 61: Exempt trees –

1. List of Exempt Trees differs slightly from those in the current Chapter 50, Min. Standards. Should they be the same? If so, Chpt 50 is missing Camphor (*Cinnamomum camphora*) and Golden Raintree (*Koelreuteria elegans*). Assume this should also be same, and is more critical, in actual Ordinance (Div. 10).
2. Consider additions to Category I Invasives to the list of exempt trees (source: Florida Invasive Species Council List of Invasive Species):
 - Carrotwood (*Cupaniopsis anacardioides*)
 - Mimosa or Silk (*Albizia julibrissin*)
 - Orchid or Mountain Ebony (*Bauhinia variegata*)
 - Shefflera, Umbrella, Octopus (*Schefflera actinophylla*)

Clarify species of Chinese Tallow. FISC lists as *Triadica sebifera*, not as *Sapium sebiferum*, listed in definitions (Melissa Lammers)

Page 3, Line 72&73: Specimen Trees –

Assumptions:

- A. Any changes here would also be reflected in actual ordinance and anywhere else Specimen Trees are listed / cited.

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B. We want to encourage 'right plant in right place' as well as use of Florida Native species.
Consider:

- 1) Being more specific re "Other Oak Species (*Quercus spp.*). For instance, water oaks (*Quercus nigra*) and laurel oaks (*Quercus laurifolia*) can be problematic; whereas in coastal areas, sand live oak (*Quercus geminata*) can be very desirable. Need specimen DBH

Clarify if *Juniperus silicola* and *Juniperus virginiana* are the same (common names are different – Eastern Red and Southern Red Cedar). If not the same, consider addition of Southern Red Cedar (*Juniperus virginiana*) also good in coastal areas, to list. (Melissa Lammers)

Page 3, Line 73: Eliminate Laurel Oaks and Turkey Oaks from the ST list. (Bob Fitzsimmons)

General comment: add definitions for 'nuisance tree' and add some reference to 'risk assessment'. (Bob Fitzsimmons)