

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Tuesday, September 12, 2017 at 5:00 p.m. Chair Zien noted a quorum is present. Roll call was taken. Those present included:

Don Zien, Chair  
Nathan Eisenberg (Arrived 5:13 p.m.)  
Sara Bowen  
Jeff Davis  
Carlie Aizenberg

Also, staff members present were Building Inspector Scott Miller, Director of Public Works Scott Brandmeier, Village Attorney Eric Larson, and Village Clerk Kelly A. Meyer.

Notice of the meeting was provided to the North Shore Now, to all others as required by State open meetings laws, and Village ordinances and posted on the official bulletin boards.

**Approval of Minutes – July 18, 2017 Meeting**

*On the motion of Ms. Bowen, seconded by Mr. Davis, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the July 18, 2017 meeting.*

**Case 2017-03: 8044 North Santa Monica Blvd**

Dr. Margaret Pearsall of 8044 North Santa Monica Boulevard and Mrs. Terry Worth of 8048 North Santa Monica Boulevard were both present for this matter.

*This case was a request for the applicant to have an opportunity to be heard and to show cause why the Village's notices dated June 19, 2017 and August 14, 2017 to remove a cottonwood tree on owner's property should be modified or withdrawn, per section 681-38(C) of the Village Code.*

Village Attorney Eric Larson gave a brief background on the relevant provision of the property maintenance code and the standards to be applied to this case.

**VILLAGE TESTIMONY**

Village of Fox Point Building Inspector Scott Miller

*Building Inspector Mr. Scott Miller stated his name and was sworn in for testimony by the Village Clerk/Treasurer.*

Village Building Inspector Mr. Miller outlined the request of applicant Dr. Margaret Pearsall. Mr. Miller noted Dr. Pearsall was appealing his decision to remove a large dead or dying cottonwood tree from her property, which he was requiring her to do because of correspondence he received from the Village Forester John Gall on June 19, 2017. Based on the correspondence, Village Forester Mr. Gall asked Mr. Miller to require Dr. Pearsall to remove the cottonwood tree per section 681 of the village's property maintenance code because of the extensive amount of major die-back and large amount of deadwood that is most likely due to one of the major Canker diseases that are typically found in cottonwood trees. Mr. Miller testified that the Forester concluded that this coupled with the weak wooden nature of this species and close proximity to structures and overhead utilities classifies the tree to be a hazard. Mr. Miller noted he inspected the tree on

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

June 19, 2017. Mr. Miller's opinion was that the tree was dying and a considerable amount of bark was missing from the tree. Also, the tree was noted to be within striking distance of structures such as, high voltage power lines, railroad tracks, fence, shed and possibly a detached garage. Therefore, it is a violation of Village Code Section 681-3(C), which requires any dead or dying trees or shrubs located adjacent to structures or conventional turf grass lawns to be removed. On June 19, 2017, Dr. Pearsall was sent a notice requesting that she remove the tree by July 19, 2017. Dr. Pearsall failed to do so and failed to comply with this request. On August 3, 2017, Dr. Pearsall submitted a letter to the Village Clerk requesting an opportunity to appeal this matter to the Board of Appeals. However, the handwritten letter was not filed appropriately because it had been submitted beyond the ten days per section 681-8(C) 1 of the village code. As a courtesy, Mr. Miller sent another letter to allow Dr. Pearsall to appeal this decision dated August 14, 2017, extending the date to August 24, 2017. Dr. Pearsall submitted a second letter to appeal this matter to the Board of Appeals; this letter was submitted within the ten-day required submittal period.

Applicant Dr. Pearsall asked if she could speak. Attorney Larson noted Dr. Pearsall could ask questions of Mr. Miller and stated she would have a chance to testify later in the hearing.

Applicant Dr. Pearsall noted she did respond within the required ten days initially.

Attorney Larson noted she could ask Building Inspector Mr. Miller a question about that or advised she could wait until she testifies herself.

Applicant Dr. Pearsall asked if Mr. Miller was aware that she had responded within the first ten days and she didn't think this happens very often in Fox Point. She stated the people at the front desk were not able to help dictate where the letter should go and that's why it was filed inappropriately. She noted she thought it went to the Tree Commission initially. Therefore, she did not respond within ten days. Kindly, the village got back to her and explained she submitted it incorrectly. She commented she was prompt.

Board of Appeals Chair Zien asked if the Board had any questions for Building Inspector Mr. Miller.

Board of Appeals Member Ms. Bowen inquired on the approximate height of the tree. Building Inspector Mr. Miller stated he was not sure of the definite height, but noted it was a very large tree. He specified you can definitely see it from Santa Monica Boulevard and it is tall enough to be within striking distance of several structures.

Board of Appeals Member Mr. Davis inquired how the cottonwood tree came to Mr. Miller's attention. Building Inspector Mr. Miller stated the Village Forester brought the tree to his attention. Mr. Gall sent Mr. Miller a notice asking him to inspect the tree under the Village's Property Maintenance Code.

Applicant Dr. Pearsall inquired on how the Village Forester became aware of the tree. Building Inspector Mr. Miller noted he was unclear. Mr. Miller was just made aware of the correspondence sent to him to inspect the tree.

Applicant Dr. Pearsall asked if the Village Forester is made aware of every single dying tree in the Village of Fox Point. Building Inspector Mr. Miller noted she would have to ask the Village Forester that question.

Applicant Dr. Pearsall inquired on why this particular tree. Building Inspector Mr. Miller again noted he could not answer that question and stated the Village Forester was not present for the hearing.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

Village of Fox Point Public Works Director Scott Brandmeier

*Director of Public Works Scott Brandmeier stated his name and was sworn in to provide testimony by the Village Clerk/Treasurer.*

Public Works Director Mr. Brandmeier stated he wished to supplement the record on behalf of Village Forester John Gall. Mr. Gall could not be here because he does have a conflict.

Public Works Director Mr. Brandmeier responded to Dr. Pearsall's questions. Village Forester John Gall became aware of the tree from a neighbor's complaint. The neighbor's property was entered upon permission to make an observation of the tree. The pictures were taken from the neighbor's property. June 30<sup>th</sup> of 2016, the picture shows the condition of the tree at that time. There are subsequent pictures on the next page from June 15, 2017. These pictures were taken approximately one year later. This displays more crown dieback of the tree itself. Mr. Brandmeier did report he had subsequent discussions with Mr. Gall about the tree. The site was visited in 2013 because of a received complaint. This has been on the village's radar screen for about four years. At the time in 2013, a letter was sent to Dr. Pearsall and the agreement was to cut away all the deadwood and the dying portions of the tree and the tree would be re-evaluated in future years. When Mr. Brandmeier had spoken to Mr. Gall in regard to the tree, Mr. Gall noted the agreement was to cut the deadwood out of the tree, to reduce the risk of injury from falling limbs.

Public Works Director Mr. Brandmeier responded to Ms. Bowens question regarding the height of the tree; the height is on the order of 50 feet tall if he remembers correctly, but it is a significant tree.

Board of Appeals member Mr. Nathan Eisenberg entered at 5:13 p.m.; this was also noted by Chair Zien.

Board of Appeals member Mr. Davis inquired who took the picture on June of 2016. Mr. Brandmeier reported Mr. Gall took the picture, which was taken due to another neighbor complaint in June of 2016. Forester Gall did have some concerns at that time because of the crown dieback. He made the assessment at that time. Roughly a year later in 2017, Village Forester John Gall received another complaint phone call about the condition of the tree. Mr. Gall again went out and assessed the tree and took pictures.

Board of Appeals Chair Mr. Zien asked Public Works Director Mr. Brandmeier why this has been going on for four years. Mr. Brandmeier stated he could not respond to the question; it would only be speculation on his part. Based on previous discussions with Dr. Pearsall, she would like to keep the tree, but the village has an ordinance that requires taking action with trees, vegetation, fences and other things the village deems to be a public safety hazard. Mr. Gall made an assessment of the cottonwood tree in 2013, 2016 and 2017. At this stage, he is of the opinion it needs to be removed. Dr. Pearsall shared with Mr. Brandmeier that she prefers the tree remain. While he respects her opinion, the village also has to look at it from a public health and safety perspective.

Board of Appeals member Mr. Davis noted it is unfortunate that Village Forester Mr. Gall was unable to be here to testify. He inquired if the Canker disease is fatal to the cottonwood tree and asked if there was there a cure to bring the tree back to health. Mr. Brandmeier responded there was no cure.

Public Works Director Mr. Brandmeier shared for record roughly three years ago, the village was faced with a similar situation. There was a private property tree on Lake Drive in Fox Point. It was literally inches from the village right-of-way. The tree showed no signs whatsoever of crown dieback, no damage to the root structure, or no damage to the tree trunk. The tree fell onto a jogger who was running down Lake Drive. The jogger was severely injured as a result of the tree falling. So, when we encounter other situations like this where the village sees crown dieback, we have chosen not to enter the property due to trespassing to evaluate

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

a particular tree, the trunk and the base of the trunk or to determine the root structure. The tree that fell on Lake Drive was an unusual situation. It was not until after the tree fell on Lake Drive that the village was actually able to make an inspection of the base of the tree and it was determined that there was some rot happening inside the tree. It was one of the most peculiar things both Public Works Director Mr. Brandmeier and Village Forester Mr. Gall had ever seen.

Public Works Director Mr. Brandmeier noted when the village assesses trees, the assessment is based on what the village has in front of them at the time. What the village has observed is significant crown dieback. Both Public Works Director and his foreman refer to a tree like this as a widow-maker. It is a concern due to the potential for limbs to drop at any time, causing damage to a property or a person.

Applicant Dr. Pearsall asked Mr. Brandmeier if he knew the tree on Lake Drive was going to come down. Mr. Brandmeier answered he absolutely did not know that the tree would fall. Dr. Pearsall inquired if he felt it was necessary to take a tree down if there is no knowledge of when the tree may come down. Mr. Brandmeier responded based on his opinion, yes when there are risks to public health and safety. Dr. Pearsall asked if Mr. Brandmeier could tell further what happened in 2013 in regard to the cottonwood tree on her property with the police. Mr. Brandmeier answered he had no information on that and if Dr. Pearsall had any additional information, he suggests the information be given as part of her testimony.

Village Attorney Eric Larson suggested taking anyone wishing to testify on the village's side to come forward and be sworn in.

**WITNESS**

Terry Worth, 8048 N Santa Monica Blvd

*Mrs. Worth stated her name and address and was sworn in to provide testimony by the Village Clerk/Treasurer.*

Mrs. Worth commented she is the neighbor to the north. If the cottonwood tree falls, the Worth's property will be the recipient of the fallen tree. Ms. Worth noted she had brought pictures of the tree and passed the pictures out to the Board of Appeals (The pictures had been included into record). The pictures were views of the cottonwood tree in respect to the Worth's property and the potential damage to overhead power lines, the sitting area of the patio, and the shed on the property. Mrs. Worth noted if the cottonwood tree is a concern and the tree is dead, it should be taken down. Her concerns expressed were for the potential safety, damage and clean-up, if the cottonwood tree were to fall. She also expressed her concern about her insurance potentially dealing with a possible damage claim.

Applicant Dr. Pearsall asked Mrs. Worth if she believed the neighbor's large crabapple tree would most likely block her cottonwood tree if it fell. Mrs. Worth responded she did not believe the large crabapple tree would block the cottonwood tree if it fell because the tree is not leaning towards the crabapple tree, it is leaning towards the overhead power lines and towards the Worth's patio. Dr. Pearsall noted the tree was not leaning. Mrs. Worth asked that the Worth's submitted pictures of the cottonwood tree be referred to in regard to the comment.

There were no other questions or testimony for the village or other citizens.

**APPLICANT**

Property Owner Dr. Margaret Pearsall, 8044 N Santa Monica Blvd

*Dr. Margaret Pearsall stated her name, address and was sworn in to provide testimony.*

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

Dr. Pearsall thanked the Board of Appeals for hearing this case.

Dr. Pearsall read her written letter to Board of Appeals. She is a physician and she moved to Village of Fox point in 2004. In her backyard, she has enjoyed the wildlife (deer raccoons, skunks, chipmunks, squirrels, turkeys, and multiple bird species). She read her appreciation for the village in regard to the following: no lighting to deter from seeing the stars a night, 1989 Tree City USA status, 2012 Bird City USA status, and annual Arbor Day celebration. Dr. Pearsall commented on the prior Village President Mike West's April 8, 2003 proclamation recognizing the valuable contributions of trees to our community's environmental, economic and aesthetic well-being. She continued by detailing the need for bird and wildlife protection. Dr. Pearsall's general concern was removal of the cottonwood tree would reduce her yard's current wildlife habitat. She noted her coverage of home owner's insurance and planned continual coverage. Dr. Pearsall specified the cottonwood tree is becoming a "snag" tree, which is an important part of a temperate forest's habitat and health for bats, birds and small mammals. She noted the tree is not a nuisance and is barely visible from Santa Monica Boulevard; it is in the backyard in the far corner. She identified from the neighbor's yard, unless you are in the far back corner, the view is blocked by the crabapple tree. Dr. Pearsall noted for the reasons listed, she proposes the tree remain standing. She asked that the Village Forester support her cottonwood's life and wildlife that the tree supports.

Applicant Dr. Pearsall indicated she felt attacked for the second time in this matter. She acknowledged the reason the particular issue had gone on so long was that in December of 2013, she hired a tree service. She met with the Village Board and the Village Forester, agreeing to top her cottonwood tree and take the branches. She noted this was not good enough for the neighbor. She was notified by her hired tree service as they were leaving her property that the neighbor was in her tree with a chainsaw. She called the Fox Point Police Department, reported the trespasser and drove home. Upon arrival, the neighbor had climbed out of the tree and jabbed her twice with the chainsaw, which the Fox Point Police Department witnessed. Dr. Pearsall stated he was arrested for trespassing and assault.

Board of Appeals member Mr. Davis read a portion of the village code provision 681-3(C), Dead or dying trees or shrubs adjacent to structures or conventional turf grass lawns shall be removed. Mr. Davis asked Village Attorney Larson if this was currently in effect. Village Attorney Larson noted it was in effect. Dr. Pearsall stated the cottonwood tree was not adjacent to anything. Mr. Davis noted that was probably a question of interpretation. Mr. Davis noted, 1) this was a provision currently in effect with the code, commenting this is not a cottonwood tree out in the woods; he noted that was the provision that the Board of Appeals was dealing with and, 2) to create an exception to the provision, you would have to show that enforcement with the provision of this chapter will show practical difficulty or unnecessary hardship. He asked Dr. Pearsall if there was a practical difficulty or unnecessary hardship to her by enforcing what is a pretty clear provision of this code. Dr. Pearsall answered, yes, there is a practical difficulty or unnecessary hardship because she likes to see the wildlife, including the redheaded woodpeckers.

Board of Appeals member Ms. Bowen inquired since 2013, had Dr. Pearsall herself called in another arborist to give advice on managing this situation. Dr. Pearsall noted she did call in another arborist in 2014, but not since 2014.

Chairman Zien asked whether anyone else wished to testify. Hearing none, Chairman Zien asked the Board for deliberation. Village Attorney Eric Larson reminded Board of Appeals to be clear that testimony is now closed.

No other individuals had come forward to be heard. Therefore, at 5:30 p.m., Chair Zien noted testimony was closed and Board of Appeals deliberation would begin.

Board of Appeals member Mr. Davis stated the standards are pretty clear in the village code.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
SEPTEMBER 12, 2017

Board of Appeals Chair Zien noted the Village Forester John Gall has given an opinion and it is unfortunate Mr. Gall is not here to testify, and is qualified. He noted the Board of Appeals has to make a determination at this point. Some of the information the Board of Appeals was given to review was to be like judges and make the best decision for the resident.

Board of Appeals member Ms. Bowen stated she was very sympathetic to the environmental concerns of the removal of the cottonwood tree, but she really wished there would have been some expert testimony on the applicant's side of testimony that this tree is solid enough to stand. The die back does concern her over the last year.

Board of Appeals member Mr. Davis commented on the opinion and expertise of the Village Forester. He indicated it is the Board of Appeals responsibility to give heed to that unless there is something that contradicts that. The village does not know if this tree will fall down. It is the village staff's job to give their best opinion as to whether there is a risk here and whether that risk merits removing a tree that is dying; it will eventually come down anyway.

*Mr. Davis moved to deny the application, and to require the applicant to remove the cottonwood tree within 90 days unless that time is extended in discussion with the Village Forester, and to direct the village attorney and the clerk to prepare a notice documenting the decision and to provide it by certified mail to the applicant. Ms. Bowen seconded. With all members voting aye, the motion carried unanimously by roll call vote.*

#### **Potential Scheduling of Future Training Opportunity**

Board of Appeals discussed briefly a probable Board of Appeals training date. Village Attorney Eric Larson will hold the Board of Appeals training pertaining to roles, limitations and points to avoid for an approximate time of a half hour to 45 minutes. The training will be held prior to the next scheduled Board of Appeals meeting. Training materials will be prepared and sent out ahead of time to Board of Appeals members.

#### **Adjourn**

*On the motion of Ms. Bowen, seconded by Mr. Davis, and carried unanimously, the Board adjourned at 5:48 p.m. Motion carried.*

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kelly A. Meyer". The signature is fluid and cursive, with a large loop at the end.

Kelly A. Meyer, WCMC  
Village Clerk/Treasurer