

ORDINANCE 2013-06

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA AMENDING ARTICLE 37.02 OF THE LAND DEVELOPMENT CODE, NATURAL RESOURCES PROTECTION; AMENDING ARTICLE 31, REQUIRED OFF-STREET PARKING AND LOADING; PROVIDING FOR PURPOSE AND INTENT; AMENDING NATIVE CANOPY TREE PROTECTION AND REPLACEMENT WITHIN UNINCORPORATED AMELIA ISLAND; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Nassau County adopted the Natural Resources Protection Ordinance, 2008-01, which included Article 37.02 of the Land Development Code; and

WHEREAS, Article 37.02 outlines tree preservation and replanting requirements for native canopy trees specifically for the unincorporated areas of Amelia Island recognizing that the island is a major tourist economy that features the beauty of large old trees; and

WHEREAS, Understanding the importance of analyzing the applicable effectiveness of new ordinances, the Board of County Commissioners has directed staff and the Planning and Zoning Board to evaluate Article 37.02; and

WHEREAS, The Nassau County Comprehensive Plan, Policy CS.02.01, states that the "County shall maintain or expand regulations in the Land Development Code (LDC) that provide for tree protection standards on Amelia Island."

WHEREAS, Staff has analyzed development projects since the adoption of Ordinance 2008-01, met with concerned citizens of Amelia Island and local development interests, and identified certain deficiencies in Article 37.02; and

WHEREAS, Staff has recommended certain amendments to Article 37.02 (tree preservation) to present to the Planning and Zoning Board; and

WHEREAS, Recognizing the drainage and site requirements of parking, and subsequent impacts on existing trees, staff has recommended certain amendments to Article 31 (parking regulations) to present to the Planning and Zoning Board; and

WHEREAS, the Planning and Zoning Board conducted a public hearing on this Ordinance on April, 2 2013 and voted to recommend approval and

legal notice of this Ordinance has been provided in accordance with Sec. 125.66, F.S.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA:

SECTION 1. FINDINGS

This Ordinance is consistent with the Nassau County Comprehensive Plan, in particular Policies 1.04A.02, 1.04.02A, 1.04.03A, 1.04B.04, 1.08.01, 4.05B.02, 5.01.05, 5.02A.01, 5.02A.04A, 5.09.05, 5.09.07, 5.11.01, 5.14.01, 5.14.03, 6.02.01, 6.02.03 and 6.05.03.

SECTION 2. AMENDMENT

Article 37.02 of the Land Development Code is amended as follows:

Section 37.02. - Native canopy tree protection.

A. Purpose and intent. The purpose of this article is to establish regulations governing the protection of Native Canopy trees as listed in table 37-4 as a valuable community resource within the unincorporated areas of Amelia Island to:

1. Encourage the retention and planting of Native Canopy Trees;
 2. Recognize the importance of Native Canopy Trees and their meaningful contribution to a healthy, beautiful, and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention, wetland erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands; and,
 3. Promote the general health, safety, and welfare of the community.
- Tree protection is beneficial to the county by providing environmental and energy efficiency safeguards, improving community appearance and quality of life, enhancing property values, and creating a functional living environment for existing and future residents.

Therefore, the board of county commissioners finds that it is in the best public interest to enact and enforce the regulations described herein for the purpose of controlling the removal of Native Canopy Trees, clear cutting and strip clearing of land in the unincorporated areas of Amelia Island.

B. General requirements.

1. The terms and provisions of this article shall apply as specified herein to all Class II, III and IV developments, pursuant to section 5.7 of this ordinance as amended from time to time, and government agencies located within the unincorporated areas of Amelia Island.

2. It shall be unlawful for any person, firm or corporation, either individually or through an agent, to cut down, destroy, clear cut, remove, or cause to be destroyed through damaging any Native Canopy tree without first obtaining site plan approval of the development review committee and the Planning and Zoning Board, except as specifically exempted herein. Violation of this section shall be a misdemeanor in the second degree as designated in the F.S. Ch. 775.

3. Developers of sites that have been completely or partially cleared of trees due to agricultural/silviculture use, but have not secured site plan approval of the development review committee and the Planning and Zoning Board, shall be required to comply with the minimum tree requirements as described in subsection I.

C. Exemptions.

1. Site plan approval of the development review committee and final approval of the Planning and Zoning Board shall not be required under the following conditions and situations, as determined by the planning and zoning department unless otherwise specified:

a) A bona fide agricultural/silviculture use such as tree nurseries, forest crops, farming, greenhouses and golf course maintenance.

b) Removal of dead or diseased Native Canopy Trees that have fallen from natural causes.

c) Removal of Native Canopy Trees that endanger public or private property, and the public health, safety and welfare of the community.

d) Removal of Native Canopy Trees planted on the premises of a plant nursery or tree farm that have been grown expressly for the purpose of selling to the general public in the ordinary course of business.

e) Removal of Native Canopy Trees within approved utility rights-of-way or easements that are necessary to supply gas, water, sewer, telephone, cable television, electrical service, or other needed utilities, subject to the provisions of Ordinance No. 2003-04.

f) Public utilities with the power of eminent domain may remove or transplant trees either on-site or off-site.

g) Emergency conditions may require the department of emergency management services to waive all, or part, of the requirements of this article in the event of manmade or natural disasters such as hurricanes, tornadoes, floods, storms/high winds, hard freezes, fires, etc. The waiver shall apply to a geographically defined area for a period not to exceed ninety (90) days.

Longer periods shall require approval of the board of county commissioners.

h) Class II, III and IV development properties (containing an existing structure) in existence as of the date of adoption of these regulations. Notwithstanding, any expansion or redevelopment of any existing developments requiring Class II, III, or IV review shall not be exempt from provisions of these regulations, unless the owner can clearly show that the provisions of this section will decrease the value of the existing development. Clear evidence means ownership and a concept plan (or previously approved plan) that both precede this ordinance.

D. Review procedures.

1. A tree inventory and retention/landscape plan shall be submitted to the development review committee, pursuant to Section 5.2(10) and 5.3 of the Nassau County Development Review Regulations, as amended from time to time, prior to the commencement of any development activity, except as specifically exempted herein.

2. The removal of healthy Native Canopy Trees may be allowed for construction purposes where all reasonable alternatives have been documented and exhausted for relocating the specific construction.

3. The removal/replacement of Native Canopy Trees that are twenty-four (24) inches DBH or greater is strongly discouraged. Therefore, all reasonable alternatives or methods that are available, such as design modifications, shall be closely examined before removal will be authorized.

4. During site plan review, the Planning and Zoning Board shall consider the effect that the proposed development activity will have on the future viability of the Native Canopy trees to be retained/relocated within the area to be developed.

5. The removal of Protected Native Canopy trees shall be allowed, as determined by the development review committee, if one or more of the following conditions exists:

a) Street opening. Tree location restricts the opening of a street or road right-of-way.

b) Utilities and drainage. Tree location restricts the construction of public utility lines or drainage facilities.

c) Property access. Tree location restricts vehicular access to the property, where there are no other reasonable access points.

d) Property use. Tree location restricts reasonable use of the property consistent with all other applicable city, county and state codes, statutes and/or ordinances; and design modifications are not practical or reasonable.

e) Hazard. A tree that constitutes a potential hazard to life or property and can be resolved by removal.

f) Poor tree health. Tree is dead, lacking functioning vascular tissue, or deteriorating to such a state that restoration methods to bring the tree to a sound condition are not practical; or the tree have a disease that may be transmitted to other trees, thereby endangering their health; and, as documented by a ISA certified arborist.

h) [Site plan.] An approved site plan which includes protected trees and corresponding protection plan as recommended by an ISA certified arborist shall identify which trees are to be removed, methods of protection from impacts of construction, and the tree replacement requirements necessary to compensate for the loss of protected Native Canopy trees.

E. Submission requirements.

1. All applicants for site plan approval for Class II, III and IV developments are hereby required to submit a tree inventory and tree retention/landscape plan as part of the standard site plan review submission procedures, including, but not limited to the following:

a. Developers of all new Class II, III and IV residential developments shall be required to submit a streetscape plan, including proposed tree retention and landscaping.

b. Each tree inventory shall have a drawing or accurate representation with an appropriate scale to show tree locations, delineating the following information:

(1) Property boundaries, existing and proposed structures and surrounding road system;

(2) Location, size, and species (utilizing botanical or common names) of all Native Canopy trees within areas of construction.

F. Protected Tree preservation/Tree replacement.

1. The minimum number of Protected Native Canopy trees to be preserved upon any development site is equal to forty five (45) percent of caliper inches within the development site as set forth herein. A Protected Native Canopy tree is defined as a healthy tree as determined by an ISA certified arborist listed in Table 37-4 and is at least 6" dbh in size. Healthy trees (and other vegetation) lying within designated conservation areas, jurisdictional wetlands and adjacent upland buffers must be retained but are not counted in the minimum preservation requirement. As an incentive for property owners to retain large trees, the preservation of any tree that is 80th percentile or larger in inches dbh (of all qualifying/protected Native Canopy trees on the proposed development site) will generate a bonus credit value of one hundred twenty five percent (1.25) of the diameter of the preserved tree. In all cases, qualifying preserved and replacement trees are credited toward the minimum landscaping requirement of each property upon which they are located. By way of illustration, a development site contains an aggregate of 100 caliper inches of qualifying protected trees and the minimum preservation equals forty-five (45) percent of total caliper inches within the development site. This forty five (45) inches of required tree protection can be preserved as a single thirty six (36) inch dbh qualifying tree (based on bonus credits); or any combination of qualifying protected trees and totaling a minimum of forty (45) caliper inches with or without bonus credits. Included in the forty five (45) percent of caliper inches for preservation shall include a Perimeter

Preservation requirement for any 6" or larger, healthy Table 37-1 tree located within a required roadway buffer and/or within 10 feet of a ROW. Perimeter Preservation trees can only be removed as per 37.02(C) or 37.02(D)5.

2. Unique development scenarios that prevent the 45 percent preservation or Perimeter Preservation requirement from being met will require replacement on an inch for inch (dbh) basis with Native Canopy trees but only if approved by the Planning and Zoning Board.

3. All replacement Native Canopy trees shall be a minimum of three (3) inches DBH, at the time of planting.

4. Replacement trees shall be planted on-site, if practical, otherwise the developer shall donate to the County and plant the required trees on public property, or alternatively, on private property where a conservation easement exists, subject to approval by the Planning and Zoning Board.

5. All replacement trees shall be in good health, conform to the standards for Florida No. 1 or better as given in Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services, Tallahassee (97T-05, second edition, February 1998), which is hereby adopted and included by reference herein.

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GH- Tree protection during construction. Property owners/developers shall protect, during construction, all protected Native Canopy trees within areas of construction, as identified on the approved site plan.

1. Prior to and during land clearing, the owner, developer or agent shall clearly mark (with red flagging) all Native Canopy trees proposed to be removed and shall erect barricades around the tree protection zone of all Native Canopy trees to be protected. The barricades must remain in place and be in good condition throughout construction. Barricades may be removed for the final grading. Building or other development permits may be temporarily revoked if protective measures are not used at any time during construction.

2. The following shall be prohibited within the tree protection zone (defined in Article 32) of designated trees, unless authorized in writing by the planning and zoning director:

- a) Parking of heavy equipment, cars and trucks or vehicular traffic;
- b) Stockpiling of any materials;
- c) Deposition of soil, sediment, or mulch;
- d) Grading or grubbing;
- e) Excavation or trenching;
- f) Burning or burial of debris, within the entire construction site;
- g) Dumping oil, gasoline, paint, chemicals, wastewater, or other construction wastes. Storage of potentially hazardous materials shall be in appropriate, non-leaking containers as far away from tree protection zone as possible.

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~~H~~ Minimum tree requirements. All Class II, III and IV non-residential developments requesting site plan approval shall meet the minimum tree requirements of section 37.05

1. Credit on a one (1) tree for one (1) tree basis toward the minimum tree requirements shall be given for each Native Canopy tree retained on site.
2. Any Native Canopy trees planted to meet the minimum tree requirements shall be a minimum of three (3) inches DBH, ten (10) feet tall, and five (5) feet wide at the time of planting.
3. Fulfillment of the minimum tree requirements in this section shall not be interpreted to waive any other landscaping requirements on the part of the applicant.

(a) In the event that the amount of retained Native Canopy trees exceeds the requirements of this section, credit on a one (1) tree for one (1) tree basis towards any other landscaping requirements shall be given for each Native Canopy tree retained on site in excess of the minimum tree requirements.

(b) Proper care and maintenance of recently planted trees; i.e., necessary water, fertilizer, and support structures, shall be the property owner's/developer's responsibility, subject to the enforcement provisions of Article 4 of the Nassau County Zoning Code and Chapter 1, Article 3 of the County Code of Ordinances.

(c) All required trees shall be in good health, conform to the standards for Florida No. 1 or better, as given in the Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services as referenced herein.

I ~~J~~-Harmful acts.

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1. No person shall abuse, mutilate or otherwise damage any protected tree, as described herein, or any tree located on public property, including those trees located in the public right-of-way along street frontages within subdivisions.

2. The reasonable and proper trimming of protected trees on public or private property by authorized persons, in accordance with accepted horticultural methods established by the International Society of Arborists (ISA), shall be allowed.

3. No person shall attach any signs in an injurious manner to protected tree, nor shall any person cause any substance harmful to protected trees to come in contact with them, or prevent water or oxygen from reaching their roots by excessive cut and fill activities.

4 Violation of this section shall be a misdemeanor in the second degree as designated in the F.S. Ch. 775.

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K. Appeals.

1. It is the intent of this article that all questions of interpretation and enforcement shall be first presented to the county in accordance with Section 3.03 and Article 4 of the Nassau County Zoning Code.

2. An application for appeal of said decisions shall be presented in accordance with Section 3.04(B)(7) of the Nassau County Zoning Code on

matters of interpretation and to the code enforcement board on matters of enforcement.

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~~K-L~~ Administration and enforcement. The planning and zoning department shall administer the provisions of these regulations. The code enforcement department shall enforce the provisions of these regulations. Any violation of the provisions set forth herein shall be brought to the property owner's attention by a certified letter from the code enforcement department. A violation of this article shall, in addition to other appropriate sanctions up to and including revocation of building permits, be enforced in accordance with the code enforcement board procedures as set out under Chapter 1, Article 3 of the County Code of Ordinances and the provisions of Chapter 162, Florida Statutes. Building permits may be re-instated after tree protection measures are brought into conformance with approved site plans and any fines and code enforcement penalties (if applicable) are addressed.

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~~L-M~~ Penalties. Penalties shall be in accordance with the requirements set forth in Chapter 1, Article 3 of the County Code of Ordinances.

~~M-N~~ Conflict. In the event that any section of these regulations is found to be in conflict with any other county code, ordinances or regulation, the more restrictive shall apply.

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(Ord. No. 2008-01, § 3, 1-31-08; Ord. No. 2010-08, § 10, 7-26-10)

Note to Codifier: new Table 37-4

Table 37-4. Amelia Island Protected Native Canopy Trees					
Name	Common Name	Mature Height (ft.)	Rate of Growth	Salt Tolerance	Drought Tolerance
Acer rubrum	Red Maple	35—50	Fast	Low	Med
Betula nigra	River Birch	45—65	Fast	Low	Low
Fraxinus spp.	Ash	60—80	Med	Med	Med
Carya spp	Hickory	80—120	Fast	Low	High
Celtis laevigata	Sugarberry/ Sugar hackberry	80—100	Fast	High	High

<i>Diospyros virginiana</i>	Persimmon	30—60	Med	Low	Med
<i>Prunus spp</i>	Cherry	30—60	Med	Low	Med
<i>Ilex opaca</i>	American Holly	30—45	Slow	Med	Med
<i>Juniperus silicicola</i>	Southern Red Cedar	25—30	Med	High	High
<i>Juniperus virginiana</i>	Eastern Red Cedar	10—40	Slow	Med	Med
<i>Liquidambar styraciflua</i>	Sweetgum	60—100	Fast	Med	High
<i>Liriodendron tulipifera</i>	Tulip Tree/Yellow Poplar	80—100	Fast	Low	Low
<i>Magnolia grandiflora</i>	Southern Magnolia	60—100	Med	High	High
<i>Magnolia virginiana</i>	Magnolia/Sweetbay	40—60	Med	Low	Low
<i>Nyssa sylvatica</i>	Black Tupelo/Black Gum	50—80	Med	Low	Low
<i>Quercus alba</i>	White Oak	50—80	Med	High	Med
<i>Quercus laurifolia</i>	Laurel Oak	60—100	Fast	Low	High
<i>Quercus shumardii</i>	Shumard Oak	40—60	Slow	Low	Med
<i>Quercus virginiana</i>	Live Oak	50—60	Med	High	High
<i>Taxodium distichum</i>	Bald Cypress	60—100	Med	Med	High

Ulmus americana	American Elm	80—100	Fast	Low	Med
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SECTION 3. AMENDMENT

Article 31 of the Land Development Code is amended as follows:

(A) General: The required off-street parking or loading facilities shall be:

(1) Identified as to purpose and location when not clearly evidenced.

(2) All off-street parking areas, except those serving single-family or two-family development, shall be paved, striped, properly drained, maintained and landscaped. All landscaping shall be in accordance with article 37, section 37.05. The planning and zoning board may allow an alternative driveway and/or parking surface as a conditional use in any zoning district. The alternative surface must be of a material that will suitably minimize dust particulate. The number of parking spaces, driveway widths, drainage design, landscaping, and other requirements of the zoning code shall remain in full force and shall be met for any alternative driveway or parking surface, unless otherwise stated in the conditional use approval. The engineer shall attach written comments to the conditional use application. The comments shall include specific remarks regarding the proposed surface.

Conditional uses may be considered only for the following:

- (a) Temporary commercial ventures where the business is not anticipated to remain for a period exceeding twelve (12) months.
- (b) Commercial activities where, because of their location or frequency of usage, a paved surface would be impractical or cause harm to the environment.
- (c) Governmental uses.
- (d) Churches.
- (e) Preservation of Protected Native Canopy trees as defined in article 37.02(F), which may also include a parking reduction

(3) A drainage plan for off-street parking areas shall be submitted to the county engineer prior to construction. The county engineer shall determine the size parking area a drainage plan will be required.

(4) If lighted, lighting shall be designed and installed so as to prevent glare or excessive light on adjacent property; and,

(5) Arranged for convenient access and safety of pedestrians and vehicles.

(B) Barriers: Where off-street parking or loading areas for four (4) or more vehicles are located on the perimeter of a lot, barriers shall be provided to ensure that all or no portion of a parked vehicle shall encroach over and onto any adjacent private property and separate ownership or over and onto any public street or sidewalks; and, further, barriers shall be provided so that no parked motor vehicle door, when open, can make such encroachment. Barriers may consist of fences, walls, hedges, chains, wheel stops, shrubs, ditches (when necessary to the drainage plan of a lot only) or other method of barrier satisfactory to the senior planner.

SECTION 4. CODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall be included and incorporated into the Land Development Code (LDC) of Nassau County, Florida. The codifier may re-letter or renumber sections to conform to the uniform numbering and style of the LDC.

SECTION 5. SEVERABILITY

It is the intent of the Board of County Commissioners of Nassau County, Florida, and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

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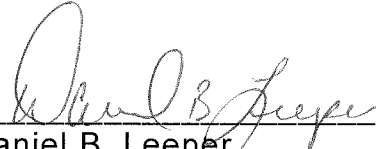
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SECTION 6. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

ADOPTED THIS 22nd DAY OF APRIL, 2013 BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA.



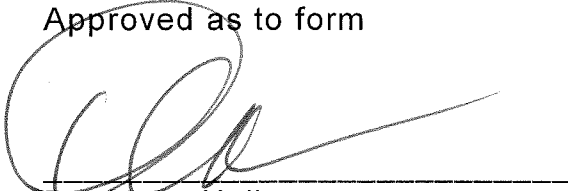
Daniel B. Leeper
Its: Chairman

ATTESTATION: Only to Authenticity
as to Chairman's Signature:



JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form



David A. Hallman,
County Attorney