

ORDINANCE 2003- 57

AN ORDINANCE AMENDING ORDINANCE 97-19, AS AMENDED, KNOWN AS THE NASSAU COUNTY ZONING CODE; SPECIFICALLY AMENDING ARTICLE 32, DEFINITIONS; ADDING ARTICLE 36, TREE PROTECTION; RENUMBERING ARTICLE 36 AND ARTICLE 37; AND, PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners find that the protection of Oak and Magnolia trees within the unincorporated areas of Nassau County on Amelia Island is essential to the present and future health, safety and welfare of the citizens of Nassau County; and,

**WHEREAS**, trees play an important role in the hydrologic cycle, transpiring considerable amount of water each day, and they precipitate dust and other particulate airborne pollutants from the air, and,

**WHEREAS**, trees offer shade from the sun, improve air quality by the reduction of carbon dioxide, reduce the impacts of noise and wind, reduce stormwater runoff, improve water quality, decrease soil erosion, provide shelter and food for wildlife, buffer the impact of adjacent developments, increase property values, and reduce heating and cooling costs; and,

**WHEREAS**, some tree species are more beneficial than others as necessary contributors to the environment and it is not necessary to protect each and every species in order to attain the public benefit of tree protection and replacement; and,

**WHEREAS**, Oak and Magnolia trees contribute to the general well-being and quality of life of the citizens of the unincorporated areas of Amelia Island, and should be preserved and protected to the fullest extent possible; and,

WHEREAS, landscaping, in general, and trees, in particular, are important to the aesthetic as well as economic value of all real property.

NOW, THEREFORE BE IT ORDAINED this 10th day of November, 2003, by the Board of County Commissioners of Nassau County, Florida that Ordinance 97-19, as amended, be amended as follows:

1. **ARTICLE 32. DEFINITIONS**

*Barricades:* A post and rail configuration used for the protection of trees during construction activity. The upright posts shall be a minimum of a two by two inch (common industry standard) wooden stake, four feet long. A minimum of a one by four inch (common industry standard) wooden board shall be used to connect the upright posts. High-visibility heavy-gauge tape may be substituted for the one by four inch connecting boards. The barricade tape must be a minimum of three inches wide, and of seven mil-thick polyethylene construction, and be a high-visibility color.

*Class IV Developments:* The following developments shall be considered Class IV developments, as amended from time to time and pursuant to Ordinance 2000-40, as amended:

- a. Multifamily Residential development containing ten (10) or more dwelling units.
- b. Non-residential containing more than 35,000 square feet of total building area.
- c. Planned Unit Developments

*Diameter at Breast High (DBH):* The diameter of a tree measured at breast height, which is fifty-four (54) inches (or 4 1/2 feet), above the grade at the base of the tree. A tree that has multiple trunks shall be measured using the sum of the diameters.

*Drip Line:* An artificial line measured in a radial pattern around a tree corresponding to the root protection zone. The line extends from the perimeter of a tree canopy vertically down to the ground.

*Magnolia*: Native canopy tree species of wet soil tolerant Sweet Bay Magnolia (Scientific Name: *Magnolia Virginiana*) and salt/wet soil tolerant Southern Magnolia (Scientific Name: *Magnolia Grandiflora*) having a DBH of six (6) inches or greater.

*Oak*: Native canopy tree species of Shumard Oak (Scientific Name: *Quercus Shumardi*), salt tolerant Laurel Oak (Scientific Name: *Quercus Laurifolia*) and salt tolerant Live Oak (Scientific Name: *Quercus Virginiana*) having a DBH of six (6) inches or greater.

*Streetscape Plan*: A landscape plan showing the location of trees along public right-of-ways or private streets and sidewalks.

*Tree*: A woody perennial plant, distinguished from a shrub by usually having a single elongated main stem or trunk, generally with few or no branches on its lower part. Most trees usually have a minimum main stem of 4 1/2 inches in diameter DBH at maturity.

*Tree Inventory*: A drawing or accurate representation of appropriate (or sufficient) scale to show tree locations, which provides the necessary information for obtaining approval of a tree retention/landscape plan.

*Tree Protection Zone*: A circular zone around each protected tree as follows:

(1) If the drip line is less than six (6) feet from the trunk of the tree, the protection zone shall be that area within a radius of six (6) feet around the tree trunk.

(2) If the drip is more than six (6) feet but less than twenty (20) feet from the trunk of the tree, the protection zone shall be that area within the radius of the full drip line around the tree trunk.

(3) If the drip line is twenty (20) feet or more from the trunk of the tree, the protection zone shall be that area within a radius of twenty (20) feet around the tree trunk.

*Tree Removal Total*: The total number of trees or sum of tree diameters of all protected Oak and Magnolia tree species that are removed by a property owner/developer.

*Tree Replacement Total:* The total number of trees or sum of the amount of tree diameter (DBH) that a property owner/developer will need to replace in order to compensate for removal of protected Oak and Magnolia trees.

## **2. ARTICLE 37. TREE PROTECTION**

### **Section 37.1 Purpose and Intent.**

The purpose of this article is to establish regulations governing the protection of Oak and Magnolia trees as a valuable community resource within the unincorporated areas of Amelia Island to:

- a. Encourage the retention and planting of Oak and Magnolia trees;
- b. Recognize the importance of Oak and Magnolia 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,
- c. 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 Oak and Magnolia trees, clear cutting and strip clearing of land in the unincorporated areas of Amelia Island.

### **Section 37.2 General Requirements.**

A. The terms and provisions of this article shall apply as specified herein to all Class IV developments, pursuant to Section 5.1 of Ordinance 2000-40 as amended from time to time,

and government agencies located within the unincorporated areas of Amelia Island.

B. 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 Oak or Magnolia tree without first obtaining site plan approval of the Development Review Committee and final approval of the Board of County Commissioners, except as specifically exempted herein.

C. Developers of sites that have been completely or partially cleared of trees due to agricultural/silviculture use ~~or other reasons~~, but have not secured site plan approval of the Development Review Committee and final approval of the Board of County Commissioners, shall be required to comply with the minimum tree requirements as described in Section 37.8.

### **Section 37.3 Exemptions.**

A. Site plan approval of the Development Review Committee and final approval of the Board of County Commissioners shall not be required under the following conditions and situations, as determined by the Planning and Zoning Department unless otherwise specified:

1. A bona fide agricultural/silviculture use such as tree nurseries, forest crops, farming, and greenhouses.
2. Removal of dead or diseased Oak or Magnolia trees that have fallen from natural causes.
3. Removal of Oak or Magnolia trees that endanger public or private property, and the public health, safety and welfare of the community.
4. Removal of Oak and Magnolia 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.
5. Removal of Oak and Magnolia 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 2003-04.

6. Public utilities with the power of eminent domain may remove or transplant trees either on-site or off-site.
7. 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.
8. Class IV development properties (containing an existing structure) in existence as of the date of adoption of these regulations. ~~This exemption does not include Oak or Magnolia trees in existence on said properties as of the date of adoption of these regulations.~~

#### **Section 37.4 Review Procedures.**

A. 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.

B. The removal of Oak and Magnolia trees may be allowed for construction purposes where all reasonable alternatives have been documented and exhausted for relocating the specific construction.

C. The removal/replacement of Oak and Magnolia 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.

D. During site plan review, the Development Review Committee shall consider the effect that the proposed development activity will have on the future viability of the Oak and Magnolia trees to be retained/relocated within the area to be developed.

E. The removal of Oak and Magnolia trees shall be allowed, as determined by the Development Review Committee, if one or more of the following conditions exists:

1. Street opening. Tree location restricts the opening of a street or road right-of-way.
2. Utilities and drainage. Tree location restricts the construction of public utility lines or drainage facilities.
3. Property access. Tree location restricts vehicular access to the property, where there are no other reasonable access points.
4. 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.
5. Hazard. A tree that constitutes a potential hazard to life or property and can be resolved by removal.
6. 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 qualified botanist.
7. Thinning of trees. Trees are so densely situated on a parcel as to significantly impair light and air circulation, which causes poor health conditions or tree disease, so that removal of up to twenty five percent (25%) of such trees is necessary to alleviate the condition.
8. An approved site plan 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 Oak and Magnolia trees.

#### **Section 37.5 Submission Requirements.**

A. All applicants for site plan approval for Class 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:

1. Developers of all new Class IV residential developments shall be required to submit a streetscape plan, including proposed tree retention and landscaping.
2. Each tree inventory shall have a drawing or accurate representation with an appropriate scale to show tree locations, delineating the following information:
  - a. Property boundaries, existing and proposed structures and surrounding road system;
  - b. Location, size, and species (utilizing botanical or common names) of all Oak and Magnolia trees within areas of construction.

#### **Section 37.6 Tree Replacement.**

A. All protected Oak and Magnolia trees that are to be removed as part of an approved site plan shall adhere to the following tree replacement standards:

1. Oak and Magnolia trees less than twenty-four (24) inches DBH: one (1) tree for one (1) tree
2. Oak and Magnolia trees greater than twenty-four (24) inches: one (1) DBH for one (1) DBH

B. All protected Oak and Magnolia trees that have been removed, for which an approved site plan was required but not obtained, will require, together with other appropriate sanctions, replacement according to the following tree replacement formula. Tree replacement shall be at two (2)



times the total DBH of all protected trees removed without an approved site plan.

C. All replacement Oak and Magnolia trees shall be a minimum of three (3) inches DBH, ten (10) feet tall, and five (5) feet wide at the time of planting.

D. 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, subject to approval by the Board of County Commissioners.

E. 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.

#### **Section 37.7 Tree Protection During Construction.**

A. Property owners/developers shall protect, during construction, all protected Oak and Magnolia 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 Oak or Magnolia trees proposed to be removed and shall erect barricades around the tree protection zone of all Oak or Magnolia 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 revoked if protective measures are not used at any time during construction.

B. 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:

1. Parking of heavy equipment, cars and trucks or vehicular traffic;
2. Stockpiling of any materials;

3. Deposition of soil, sediment, or mulch;
4. Grading or grubbing;
5. Excavation or trenching;
6. Burning or burial of debris, within the entire construction site;
7. 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.

**Section 37.8 Minimum Tree Requirements.**

A. All Class IV non-residential developments consisting of more than 35,000 square feet of total building area requesting site plan approval shall meet the minimum tree requirements of one (1) Oak or Magnolia tree per five thousand (5,000) square feet of building area.

1. Credit on a one (1) tree for one (1) tree basis toward the minimum tree requirements shall be given for each Oak or Magnolia tree retained on site.
2. Any Oak or Magnolia 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 Oak or Magnolia 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 Oak or Magnolia 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.

#### **Section 37.9 Harmful Acts.**

A. 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.

B. 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.

C. 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.

#### **Section 37.10 Appeals.**

A. 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.

B. An application for appeal of said decisions shall be presented in accordance with Section 3.04(10)(i) of the Nassau County Zoning Code on matters of interpretation and to the code enforcement board on matters of enforcement.

#### **Section 37.11 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, 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.

#### **Section 37.12 Penalties.**

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

#### **Section 37.13 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.

#### **Section 37.14 Severability.**

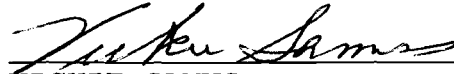
If any section, part of a section, paragraph, sentence, clause, phrase or word of these guidelines are, for any reason, held or declared to be unconstitutional, inoperative, void or invalid by any court having jurisdiction, such holding or invalidity shall not effect the validity of any other provision of these guidelines.

#### **~~Section 37.15 Sunset Provision.~~**

~~This article shall be automatically repealed on December 31, 2015 unless otherwise amended or ratified by the Board of County Commissioners of Nassau County, Florida.~~

3. This ordinance shall take effect upon receipt in the Secretary of State's office.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA



VICKIE SAMUS

Its: Chairman

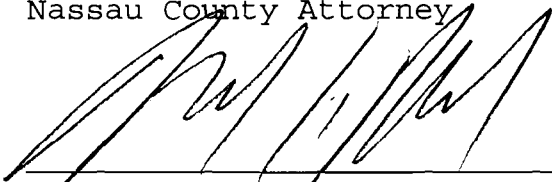
ATTEST:



J. M. "CHIP" OXLEY, JR.

Its: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney



MICHAEL S. MULLIN

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