



INTEROFFICE MEMORANDUM

FROM THE DEPARTMENT OF ENVIRONMENTAL AND ENGINEERING SERVICES

DATE: July 9, 2020

TO: Cale Curtis, City Manager
Board of Adjustment Members

VIA: Elizabeth Taschereau, Director of Development Services

FROM: Curt A. Keyser, P.E. *CAK*
Director of the Department of Environmental and Engineering Services

RE: Culver's Restaurant – Appeal of Administrative Decision

The applicant seeks to leverage Section 2-27(b) of the City's Code of Ordinances in filing an appeal of an administrative decision or order of city personnel in the implementation and enforcement of the provisions of Article II Preservation and Protection of Trees of Chapter 23 Landscaping.

In response to the applicant's submittal, I offer the following considerations:

The application fails to identify the error that is alleged to have occurred. Where the application asks the applicant to describe in detail the alleged administrative error, the applicant entered "NA", so **a)** there is no alleged error identified for me to defend or refute and **b)** it is not clear what the applicant is appealing. The Code is very clear with regard to the definition of specimen trees, what trees qualify as specimen trees, and the requirements for mitigation of specimen trees, so there is no error in interpretation or application of the code with respect to the mitigation of the four (4) Mahogany trees in question.

The application fails to identify the applicant's reason for requesting a reversal of decision. In that line on the application, the applicant also entered "NA".

The application fails to identify what relief is being sought and whether or not that relief is in the best interest of the community. If relief could be granted, the interests of the community would be best served by granting the **minimum** relief necessary to cure whatever hardship the applicant has suffered. However, this application doesn't identify a hardship, doesn't identify the relief being sought, and doesn't identify the minimum relief required to cure the hardship. Instead, the application appears to be seeking complete relief from any tree mitigation requirements. Granting of complete relief from mitigation of the removal of significant tree canopy would not appear to be as good for the community as having more trees on this property or having trees planted elsewhere in the city to offset the canopy being removed to accommodate this development.

The application is inaccurate in its statement of the value of mitigation required. In the attachment to the application, the applicant asserts that “a couple of weeks ago, the City of Margate DEES determined that we owe \$47,000.00 for the removal of a specimen tree located on the Culver’s of Margate redevelopment site.” This is not a true statement in any way. In fact, the applicant has entered into an agreement with the City to mitigate 4 trees in the amount of \$120,754.00. I am not aware of any amendment, modification, replacement, or preemption of this agreement.

The application is inaccurate in its presentation of the facts associated with the valuation of tree #26. In the first paragraph of the attachment to the application, the applicant states that tree #26 was valued at \$120,754.00 at the time the guaranty and tree replacement agreement was executed in January, but was later downgraded in value by DEES to \$47,000.00. Neither of those assertions is true. Tree # 26 was never valued at \$120,754.00 by DEES and it was never valued at \$47,000.00 by DEES. As demonstrated by the attached tree valuations, tree #26 was appraised by DEES on December 9, 2019 at \$104,375. DEES has never re-assessed this tree. Rather, the owner has subsequently commissioned 2 competing and conflicting appraisals of Tree #26. The second and lower of those appraisals was for \$29,931. The applicant was seeking to have that appraisal accepted by DEES. Combining that value for tree #26 with the original DEES appraisals for trees #8, 29, and 31 and the credit for the additional trees provided, the resultant mitigation amount would have come to \$47,310. However, Code Section 23-20(1)(2) does not contemplate consideration of any tree appraisals other than one performed and prepared by DEES. So, there was never any “downgrading” by DEES of the value of tree #26 or the total value of mitigation required.

The applicant, on January 13, 2020, after a month of consideration of his options, and with the consultation and apparent endorsement by his attorney, entered into a lawful and binding **Guaranty and Replacement Agreement** with the City for mitigation of the specimen trees being removed to accommodate this development. The guaranty and agreement does not require the applicant to do anything that is not required by code. Rather, it memorializes the mitigation value (\$120,754) of the specimen trees, it delineates (7) options available to the applicant to mitigate the specimen trees, it allows the applicant to obtain his building permit and begin construction immediately (before determining the method of mitigation and identifying such on his permitted plans), it **guarantees** that he will mitigate the specimen trees in 1 of the 7 ways outlined therein, and it effectively terminates any further negotiations regarding this matter.

The applicant has obtained his permits and is nearing the end of construction; he has not mitigated the trees; he did not protect the root zone of the specimen trees as required by code and as detailed on his permit plans, thereby allowing the trees to be damaged and compromised during construction; and he recently removed them all, thereby eliminating 5 of his 7 mitigation options that he agreed to in January. He now seeks to relieve himself of his obligations under the Guaranty and Replacement Agreement.

Prepared by:

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Fort Lauderdale, FL 33301

(Space above this line reserved for recording office use only)

GUARANTY AND REPLACEMENT AGREEMENT

Culver's of Margate, LLC ("Culver's") is the developer of certain property known as:

The land referred to herein below is situated in the County of Broward, State of Florida, and described as follows:

Tract A, of MARGATE DISTRICT HEADQUARTERS, according to the Plat thereof, as recorded in Plat Book 88, Page 14, of the Public Records of Broward County, Florida;

LESS AND EXCEPT the following described portion thereof:

Commence at the Northeast corner of said Tract A; thence South 01°10'00" East, along the East line of said Tract A and the West right of way line of N.W. 55th Avenue, for a distance of 250.00 feet to the South line of said Tract A; thence South 89°32'02" West, along said South line, for a distance of 293.69 feet for the Point of Beginning of the herein described parcel; thence continue South 89°32'02" West, along said South line, for a distance of 336.51 feet to the West line of said Tract A and the East right of way line of State Road No. 7; thence North 01°00'34" West, along said West line of said Tract A and the East right of way line of State Road No. 7, for a distance of 250.18 feet to the North line of said Tract A and the South right of way line of Copans Road; thence North 89°33'02" East, along said North line of Tract A and South right of way line of Copans Road, for a distance of 338.96 feet; thence South 00°26'58" East, departing said South line, for a distance of 250.07 feet to the Point of Beginning.

Said land also described as follows:

A part of Tract A, of MARGATE DISTRICT HEADQUARTERS, according to the Plat thereof, as recorded in Plat Book 88, Page 14, of the Public records of Broward County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Tract A; thence South 01°10'00" East along the East line of said Tract A and the West right of way line of N.W. 55th Avenue, for a distance of 250.00 feet to the South line of said Tract A; thence South 89°32'02" West, along said South line, for a distance of 293.69 feet to a point; thence North 00°26'58" West, for a distance of 250.07 feet to the North line of said Tract A and the South right of way line of Copans Road; thence North 89°33'02" East, along said North line of Tract A and the South right of way line of Copans Road, for a distance of 290.48 feet to the Point of Beginning.

Culver's of Margate, LLC is the developer of a Culver's Restaurant. The City of Margate has identified certain specimen trees (attached hereto as Exhibit A) that must be preserved, replaced or substituted with a similar species, cash payment to the City's Tree Preservation Account, or alternatively obtain a variance.

To expedite the development of a Culver's Restaurant at the aforementioned property location, Culver's knowingly and voluntarily enters into this Guaranty and Replacement Agreement. Culver's shall be bound by the terms hereunder and must be in full compliance within one (1) year of execution of both parties **or** prior to the application for a Temporary Certificate of Occupancy or Certificate of Occupancy; whichever comes first in time.

NOW, THEREFORE, based on the above and in consideration for the issuance of the permits, Culver's agrees as follows:

1. Guaranty. Culver's hereby guarantees unconditionally to the City of Margate that it will:

- Pay the full balance (\$120,754.00) of the specimen tree appraised value to the City's Tree Preservation Account [Sec. 23-20(I)]; or
- Relocation of tree #26 (57" Swamp Mahogany) per Sec. 23-20 (D, E, F, and G) and pay \$16,379 to the City's Tree Preservation Account [Sec. 23-20(I)]; or
- Relocation of tree #26 [Sec. 23-20 (D, E, F, and G)] and plant 22 Category 1 trees (based on a \$750/ per tree) within the municipality [Sec. 23-20(I)]; or
- Plant 161 Category 1 trees (based on a \$750/ per tree) within the municipality [Sec. 23-20(I)]; or
- Modifying the northwest area of the site to maintain the location of tree #26 and pay \$16,379 to the City's Tree Preservation Account [Sec. 23-20(I)]. This option requires an application to be submitted to the DRC. Sec. 31-54(i); or
- Modifying the northwest area of the site to maintain the location of tree #26 and plant 22 Category 1 trees (based on a \$750/ per tree) within the municipality [Sec. 23-20(I)]. This option requires an application to be submitted to the DRC. Sec. 31-54(i); or

- Apply for and obtain a variance for the preservation of tree #26 (57" Swamp Mahogany). Sec. 23-27 "Preservation as grounds for variance; appeals from administrative decisions."

2. Obligation. Culver's promises to fulfill all obligations under this agreement whether it include the payment of indebtedness under any one of the above options, performance of all obligations of Culver's, all guarantors, pledgors, and other obligors under the options that may also include no payment in lieu of preservation of all of the trees.

3. No Waiver of Code Requirements. Culver's understands and agrees the above options provided do not supersede or take precedence over any requirements outlined in the City of Margate Code of Ordinances nor do the above options limit, negate or override any administrative determinations provided for in the City of Margate Code of Ordinances.

4. Independent Obligations. Culver's obligations under this guaranty are independent of those of any other guarantor.

5. Default. Either of the following constitutes a default by Culver's under this guaranty:

(a) the failure of Culver's to perform any of its obligations under this guaranty; or

(b) the commencement of any bankruptcy, insolvency, arrangement, reorganization, or other debtor relief proceeding by Culver's under any federal or state law, whether now existing or enacted hereafter.

6. Costs and Expenses. Culver's agrees to pay the City's reasonable out-of-pocket costs and expenses, including but not limited to legal fees and disbursements incurred in any effort to collect or enforce any of the guaranteed obligations of the note or this guaranty, whether or not any lawsuit is filed.

7. Severability. The invalidity or unenforceability of any one or more provisions of this guaranty will not affect the validity or enforceability of any other provision.

8. Governing Law. This guaranty shall be governed by and construed under the laws of the state of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

9. Binding Effect. The provisions of this guaranty shall bind and benefit Culver's, the heirs, executors, administrators, legal representatives and successors.

10. Assignment. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

There shall be no partial assignments of this Agreement.

11. Authority. Culver's individually warrants that it has all requisite power and authority to:

(a) execute, deliver, and be legally bound by this guaranty on the terms and conditions stated in it; and

(b) transact any other business with the City of Margate as necessary to fulfill the terms of this guaranty.

12. Modification or Waiver. No provision of this guaranty or the City of Margate's rights hereunder can be waived or modified, and Culver's cannot be released from its obligations hereunder, except by a writing executed by both parties. No waiver shall be applicable except in the specific instance for which it is given.

13. Entire Agreement. This guaranty constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, and understandings. No supplement to or modification of this guaranty shall be binding unless executed in writing by all of the parties.

14. Headings. All headings in this guaranty are for convenience only and shall be disregarded in construing the substantive provisions of this guaranty.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Guarantor executes this guaranty on January 13, 2020.

Culver's of Margate, LLC, a Florida limited liability company

By: Eric Pierce 1-13-20
Eric Pierce (Date)
Manager

Signed in the presence of:

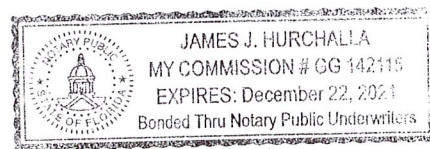
[Signature]
Witness [Signature]

[Signature]
Witness [Signature]

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 13 day of January, 2020 Eric Pierce, Manager of Culver's of Margate, LLC, a Florida limited liability company. Culver's of Margate, LLC is personally known to me or has produced _____ as identification.

[Signature]
Notary Public - State of Florida



Trunk Formula Method

Case # 26 Property CULVERS REST. Date 12/9/19
 Appraiser A. STUBBINS

Field Observations

1. Species MAHOGANY
2. Condition 69 %
3. Trunk Circumference _____ in./cm Diameter 57 in./cm
4. Location % = (Site 75 % + Contribution 40 % + Placement 70 % + 3 = 61.6 %)

Regional Plant Appraisal Committee and/or Appraiser Developed or Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 3 in./cm
(Trunk Area) 7 in²/cm² TA_R
7. Replacement Tree Cost \$ 250
(see Regional Information to use Cost selected)
8. Installation Cost \$ 500
9. Installed Tree Cost (#7 + #8) \$ 750
10. Unit Tree Cost \$ 107 per in²/cm²
(see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:
 (TA_A or ATA_A; use Tables 4.4-4.7)
 or c² (#3) _____ × 0.08
 or d² (#3) 57 × 0.785 = 2550 in²/cm²
12. Appraised Tree Trunk Increase (TA_{INCR}) =
 TA_A or ATA_A 2550 in²/cm² (#11) - TA_R 7 in²/cm² (#6) = 2543 in²/cm²
13. Basic Tree Cost = TA_{INCR} (#12) 2543 in²/cm² × Unit Tree Cost (#10) \$ 107
 per in²/cm² + Installed Tree Cost (#9) \$ 750 = \$ 272,851
14. Appraised Value = Basic Tree Cost (#13) \$ 272,851 × Species rating
 (#5) 90 % × Condition (#2) 69 % × Location (#4) 61.6 % = \$ 104,375
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 104,375

Items 5 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.

Trunk Formula Method

Case # 8 Property CULVERS REST. Date 12/9/19
Appraiser A. STUBBINS

Field Observations

1. Species MAHOGANY
2. Condition 29 %
3. Trunk Circumference in./cm Diameter 21 in./cm
4. Location % = (Site 75 % + Contribution 40 % + Placement 70 %) $\div 3 = 61.6\%$

Regional Plant Appraisal Committee and/or Appraiser Developed or -Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 3 in./cm
(Trunk Area) 7 in²/cm² TA_R
7. Replacement Tree Cost \$ 250
(see Regional Information to use Cost selected)
8. Installation Cost \$ 500
9. Installed Tree Cost (#7 + #8) \$ 750
10. Unit Tree Cost \$ 107 per in²/cm²
(see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:
(TA_A or ATA_A; use Tables 4.4-4.7)
or c^2 (#3) $\times 0.08$
or d^2 (#3) 21 $\times 0.785$ = 346 in²/cm²
12. Appraised Tree Trunk Increase (TA_{INCR}) =
TA_A or ATA_A 346 in²/cm² (#11) - TA_R 7 in²/cm² (#6) = 339 in²/cm²
13. Basic Tree Cost = TA_{INCR} (#12) 339 in²/cm² \times Unit Tree Cost (#10) \$ 107
per in²/cm² + Installed Tree Cost (#9) \$ 750 = \$ 37,023
14. Appraised Value = Basic Tree Cost (#13) \$ 37,023 \times Species rating
(#5) 90 % \times Condition (#2) 29 % \times Location (#4) 61.6 % = \$ 6,157
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 6,157

Items 5 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.

Trunk Formula Method

Case # 29 Property Culvers Loft Date 12/9/19
Appraiser A. STUPPINS

Field Observations

1. Species MAHOGANY
2. Condition 75 %
3. Trunk Circumference _____ in./cm Diameter 33 in./cm
4. Location % = (Site 75 % + Contribution 40 % + Placement 70 %)
+ 3 = 61.6 %

Regional Plant Appraisal Committee and/or Appraiser Developed or -Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 3 in./cm
(Trunk Area) 7 in²/cm² TA_R
7. Replacement Tree Cost \$ 250
(see Regional Information to use Cost selected)
8. Installation Cost \$ 500
9. Installed Tree Cost (#7 + #8) \$ 750
10. Unit Tree Cost \$ 107 per in²/cm²
(see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:
(TA_A or ATA_A; use Tables 4.4-4.7)
or c^2 (#3) _____ $\times 0.08$
or d^2 (#3) 33 $\times 0.785$ = 855 in²/cm²
12. Appraised Tree Trunk Increase (TA_{INCR}) =
TA_A or ATA_A 855 in²/cm² (#11) - TA_R 7 in²/cm² (#6) = 848 in²/cm²
13. Basic Tree Cost = TA_{INCR} (#12) 848 in²/cm² \times Unit Tree Cost (#10) \$ 107
per in²/cm² + Installed Tree Cost (#9) \$ 750 = \$ 91,486
14. Appraised Value = Basic Tree Cost (#13) \$ 91,486 \times Species rating
(#5) 90 % \times Condition (#2) 75 % \times Location (#4) 61.6 % = \$ 37,847
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 37,847

Items 5 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.

Trunk Formula Method

Case # 31 Property CULVERS REST. Date 12/9/19
 Appraiser A. STUBBINS

Field Observations

1. Species MAHOGANY
2. Condition 37 %
3. Trunk Circumference _____ in./cm Diameter 18 in./cm
4. Location % = [Site 75 % + Contribution 40 % + Placement 70 %]
 + S = 66.6 %

Regional Plant Appraisal Committee and/or Appraiser Developed or Modified Information

5. Species rating 90 %
6. Replacement Tree Size (diameter) 3 in./cm
 (Trunk Area) 7 in²/cm² TA_R
7. Replacement Tree Cost \$ 250
 (see Regional Information to use Cost selected)
8. Installation Cost \$ 500
9. Installed Tree Cost (#7 + #8) \$ 750
10. Unit Tree Cost \$ 107 per in²/cm²
 (see Regional Information to use Cost selected)

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area:
 (TA_A or ATA_A; use Tables 4.4-4.7)
 or c² (#3) _____ × 0.08
 or d² (#3) 18 × 0.785 = 254 in²/cm²
12. Appraised Tree Trunk Increase (TA_{INCR}) =
 TA_A or ATA_A 254 in²/cm² (#11) - TA_R 7 in²/cm² (#6) = 247 in²/cm²
13. Basic Tree Cost = TA_{INCR} (#12) 247 in²/cm² × Unit Tree Cost (#10) \$ 107
 per in²/cm² + Installed Tree Cost (#9) \$ 750 = \$ 27,179
14. Appraised Value = Basic Tree Cost (#13) \$ 27,179 × Species rating
 (#5) 90 % × Condition (#2) 37 % × Location (#4) 66.6 = \$ 5,575
15. If the Appraised Value is \$5,000 or more, round it to the nearest \$100; if it
 is less, round to the nearest \$10.
16. Appraised Value = (#14) \$ 5,575

Items 5 through 10 are determined by the Regional Plant Appraisal Committee. The Wholesale Replacement Tree Cost, the Retail Replacement Tree Cost, or the Installed Tree Cost (#9) divided by the Replacement Tree Size (#6) can be used for the Unit Tree Cost (#10), or it can be set by the Regional Plant Appraisal Committee.