

PLANNING & ZONING CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

April 13, 2023

AGENDA TOPIC: Consideration and possible action for a Heritage Plan from the applicant Urbanist Inc. on behalf of the property owners Brenda Minahan and Mark Minahan for a proposed multi-unit residential community on approximately 19.8 acres zoned Mixed Use Village District (MU) known as Botanica. Generally located north-east of the intersection of Dietz Elkhorn Road & Ralph Fair Road

DATE: April 13, 2023

DEPARTMENT: Public Works

PRESENTED BY: Kelsey Delgado, Environmental Program Manager
Lata Krishnarao, AICP, LEED ND, Consultant, Ardurra

INTRODUCTION/BACKGROUND:

On March 16, 2023, a Heritage Plan for Botanica was submitted to the Public Works Department by the applicant Urbanist Inc. This Heritage Plan consists of the following types of trees to be removed:

Protected Trees

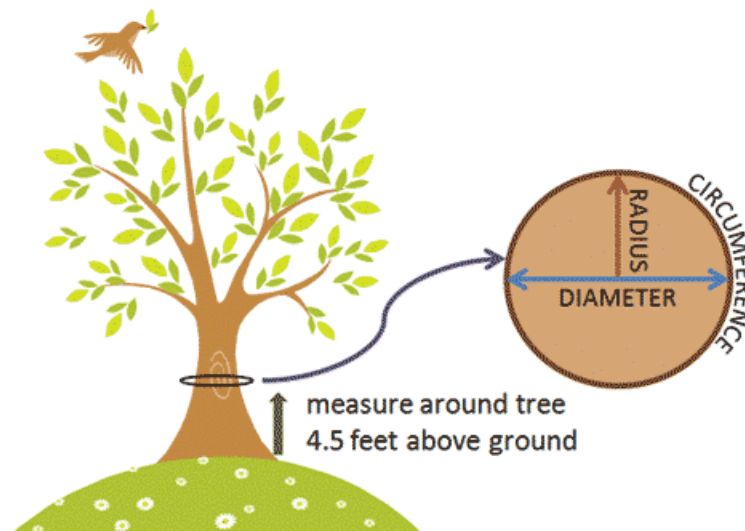
Circumference=28 inches or larger

Diameter=9 inches or larger

Heritage Trees

Circumference=75 inches or larger

Diameter=24 inches or larger



This Heritage Plan submission is currently vested under the City's Unified Development Code (UDC) adopted in 2019. Section 8.8 contains a requirement which states: "A Heritage Plan is required to be reviewed and approved by the Planning and Zoning Commission and City Council prior to any construction activity that is likely to endanger a Heritage Tree, TC 75 inches or larger. The tree

trunk circumference is measured at diameter of breast height (DBH), or four and a half (4 ½) feet, as detailed by the Texas Forest Service.” “A Heritage Plan must be submitted to the City, reviewed by City Staff, and voted on by the Planning and Zoning Commission before a Preliminary Plat or Site Development Permit is forwarded to City Council. It must be approved by City Council before a Preliminary Plat is approved.” The submitted Heritage Plan shows the following Heritage Trees:

Tree #886 – 28” Oak – To Be Saved

Tree #879 – 28.5” Oak – To Be Saved

Tree #881 – 29” Oak – To Be Saved

Tree #5149 – 29” Oak – To Be Saved

Tree #887 – 29.5” Oak – To Be Saved

Tree #878 – 31” Oak – To Be Saved

Tree #888 – 31” Oak – To Be Saved

Tree #873 – 31.5” Oak – To Be Saved

Tree #885 – 28.5” Oak – To Be Saved

Tree #889 – 29” Oak – To Be Saved

Tree #884 – 30” Oak – To Be Removed

Tree #874 – 31.5” Oak – To Be Removed

Tree #875 – 35” Oak – To Be Removed

Tree #876 – 40” Oak – To Be Removed

Tree #880 – 34” Oak – To Be Removed

Please note that tree diameters between 9 and 28 inches have not yet been identified on the Heritage Plan.

Mitigation shall be at a 1:1 ratio for Tree Circumference (TC) inches to be removed. The applicant may plant smaller trees to replace Protected and Heritage Trees, provided that no tree smaller than a Tree Circumference (TC) of 8 inches (2.5 inch diameter) and that the total tree coverage on the lot (as measured in Tree Circumference (TC) inches) is approximately the same as pre-development conditions. In cases where soil, slope, lot size, or other natural constraints make replacing the same number of Tree Circumference (TC) inches unfeasible, the City Manager (or his designee), may, at their sole discretion, allow some or all of the mitigation to take place on a separate, public site within the City, or on lands owned by an association that operates and maintains trails, open space, or parkland within the City and that are usable by residents of the general area where the applicant’s land is located.

To mitigate, sixty-nine (69) trees with a caliper of at least two and one half - inches (2.5") will need to be planted per the plan currently being provided (not including mitigation needed for tree diameters between 9 and 28 inches). The mitigation trees have not been identified in the current plan provided.

Additionally, any Heritage Trees planned for removal will require City Council approval prior to the removal of said trees.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The City of Fair Oaks Ranch's current process requires the P & Z to consider the Heritage Plan and make a recommendation to the City Council. The City Council has the final authority to act on the Heritage Plan.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

None

LEGAL ANALYSIS:

Sec. 212.009 (b-2) of the Texas Local Government Code sets the following guidelines for approval of a plan.

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL.

(a) The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A plan or plat is approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b) If an ordinance requires that a plan or plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove the plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is approved by the inaction of the commission. A plan or plat is approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

Additionally, the code allows for **extension of time** as follows:

(b-2) Notwithstanding Subsection (a) or (b), the parties may extend the 30-day period described by those subsections for a period not to exceed 30 days if:

(1) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(2) the municipal authority or governing body, as applicable, approves the extension request.

RECOMMENDATION/PROPOSED MOTION:

Staff recommends approval of the extension of time.

Motion: I move to recommend approval of a request for an extension of time for a Heritage Plan from the applicant Urbanist Inc. on behalf of the property owners Brenda Minahan and Mark Minahan for a proposed multi-unit residential community on approximately 19.8 acres zoned Mixed Use Village District (MU) known as Botanica.

If the Planning and Zoning Commission is not interested in recommending the approval of the extension of time, staff recommends adding the following as conditions of recommending approval.

Motion: I move to recommend approval for a Heritage Plan from the applicant Urbanist Inc. on behalf of the property owners Brenda Minahan and Mark Minahan for a proposed multi-unit residential community on approximately 19.8 acres zoned Mixed Use Village District (MU) known as Botanica with the following conditions:

1. Identify all Protected and Heritage Trees for removal on the Heritage Plan.
2. Identify all required mitigation trees on the Heritage Plan.

Attachment:

1. Heritage Plan Extension Request
2. Heritage Plan