

ORDINANCE NO. 1071

AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF MECHANICSBURG, ADOPTED BY ORDINANCE 925 AND THEREAFTER AMENDED, WITH RESPECT TO CHAPTER 1, ADMINISTRATION AND GOVERNMENT, TO AMEND THE PROVISIONS OF THE CHAPTER RELATING TO THE ESTABLISHMENT OF THE SHADE TREE COMMISSION, AND WITH RESPECT TO CHAPTER 25, TREES, TO AMEND THE CHAPTER IN ITS ENTIRETY.

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough of Mechanicsburg, Cumberland County, Pennsylvania, as follows:

SECTION 1: Sub-part C [Shade Tree Commission] of Part 4 [Boards and Commissions] of Chapter 1 [Administration and Government] of the Code of Ordinances of the Borough of Mechanicsburg is hereby amended to state in its entirety as follows:

C. Shade Tree Commission

§1-421. Shade Tree Commission Established.

There is hereby created the Borough of Mechanicsburg Shade Tree Commission which shall be called the Shade Tree Commission, hereinafter referred to as "Commission."

§1-422. Membership and Compensation.

The Commission shall consist of five (5) persons appointed by Borough Council whose appointments shall be as follows: one member to be appointed for five (5) years, one member to be appointed for four (4) years, one member to be appointed for three (3) years, one member to be appointed for two (2) years, and one member to be appointed for one (1) year. On the expiration of the term of any commissioner, a successor shall be appointed by the council to serve for a term of five years. All members shall be residents of the Borough and shall serve without compensation.

§1-423. Vacancies.

When a vacancy in office occurs, the Borough Council may appoint a qualified person to fill the unexpired term.

§1-424. Conduct of Business.

The Commission shall elect officers during the month of January of each year. It shall meet monthly and, in the month of October of each year, shall provide a written annual report of its activities, including its transactions and expenses, to the Borough Council. Annually in late summer, the Commission shall inspect all shade trees under its jurisdiction and shall include its findings concerning the condition of trees and recommended maintenance in its annual report to Borough Council. The Commission may make and alter rules and regulations for its own organization and procedure, provided that they are consistent with the laws of the Commonwealth and all provisions of this chapter. A majority of the Board shall constitute a quorum, and action taken at any meeting shall require the affirmative vote of the majority of members present.

§1-425. General Powers.

Excepting such powers as are reserved to Borough Council under applicable law, or as reserved in chapter 25 [Trees], the Commission shall have exclusive custody and control of the shade trees in the borough, and is authorized to plant, transplant, remove, maintain and protect shade trees on the streets and highways. It shall perform all the duties and may exercise all the powers conferred by law upon borough shade tree commissions, including approval of the location, planting, transplanting, removal, replacement and maintenance of trees and generally be concerned with the protection of trees in public areas including public streets, alleys, ways, parks, easements, rights-of-way, or other areas under the control of the Borough. The Commission may make and enforce rules and regulations for the location, planting, transplanting, removal, replacement, care and protection of the shade trees of the Borough, provided that all such rules or regulations shall be approved by the Borough Council before taking effect.

§1-426. Employees.

When deemed necessary by the Borough Council, the services of the Borough Solicitor, Engineer, Codes Officer, or other employees may be made available to the Commission. Nothing herein shall be construed to require Borough Council to budget funds for the provision of such services.

SECTION 2: Part 1 [Regulation of Shade Trees] of Chapter 25 [Trees] of the Code of Ordinances of the Borough of Mechanicsburg is hereby amended to state in its entirety as follows:

PART 1

REGULATION OF SHADE TREES

§25-101. Definitions and Interpretations.

In the interpretation of this Part, the present tense includes the future; the singular number includes the plural and the plural includes the singular; and the word person includes natural person, property owner, company, trust, individual, partnership, firm, association, corporation, or entity of any kind. The following terms shall have the definitions assigned.

BOROUGH - shall mean the Borough of Mechanicsburg.

BOROUGH COUNCIL - shall mean the Borough Council of the Borough of Mechanicsburg.

CHAIRPERSON - shall mean the duly elected chairperson of the Commission.

COMMISSION - shall mean the Shade Tree Commission of the Borough of Mechanicsburg.

NOTICE - shall mean the notice described in § 25-108 of this Chapter.

OWNER - shall mean the legal and beneficial owner of land. Where the legal and beneficial ownership of land is severed, the term shall include all persons holding legal and beneficial interests.

PERSON - shall mean an individual, partnership, corporation, unincorporated association, civic organization or other similar entity.

PUBLIC AREA - shall mean any public street, alley, park, recreation area, open space, easement, right-of-way, way or other public area within the corporate limits of the Borough and under its control.

RIGHT OF WAY - shall mean the area of any public street, alley, road, highway, way or other publicly held thoroughfare within the corporate limits of the Borough.

SECRETARY - shall mean the duly elected secretary of the Commission.

SHADE TREE - shall mean any tree, shrub or other woody plant, which is planted in any right-of-way, public area, or has a portion of its trunk, branches or roots extending into any right-of-way.

STREET - shall mean the public streets, highways, roads, avenues, alleys ways and similar areas, including public walkways appurtenant thereto, to the extent of the public right-of-way in such areas. A shade tree shall be deemed to be “in” such area when a portion of its trunk, branches or roots extend therein.

TREE LAWN - shall mean that part of a public street not covered by a sidewalk or other paving lying between the property line and that portion of the street or highway usually used for vehicular traffic, typically known as the “grassy” strip located between the curb and the sidewalk.

§25-102. Legislative Intent.

The Borough recognizes that properly planted, maintained and protected shade trees add to the aesthetics and health and welfare of the citizens of the borough. Therefore, it is the intent of this chapter to establish rules and regulations to encourage the planting of appropriate shade trees, provide for the proper maintenance of the trees, protect shade trees and provide guidelines for the removal and replacement of shade trees.

§25-103. Jurisdiction of Commission.

1. Excepting such powers as are reserved to Borough Council under applicable law, or as herein reserved, the Commission shall have exclusive custody and control of the shade trees in the Borough, and is authorized to plant, transplant, remove, maintain and protect shade trees in the streets and public areas in the Borough.
2. Borough Council hereby reserves the following powers unto itself, its officers, employees, agents and contractors:

- A. Such power and authority as is reserved to it in the Pennsylvania Motor Vehicle Code to require owners of real property to remove any tree, plant, shrub or other similar obstruction or part thereof, which by obstructing the view of any driver constitutes a traffic hazard.¹
- B. Such power and authority as is reserved to it in the Pennsylvania Borough Code to accept, purchase and plant or contribute to the purchasing and planting of shade trees along the streets and sidewalks of the Borough.²
- C. Such power and authority as is reserved to it in the Pennsylvania Borough Code and this chapter to assess liens.³
- D. Such power and authority as is reserved to it in the Pennsylvania Borough Code to accept the petition of a majority of the property owners upon any public street and, after receiving the counsel of the Commission, thereupon ordain the planting and replanting of suitable shade trees along and upon the sides of such streets by the owners of property abutting the points designated in such ordinance.⁴
- E. All powers and authority reserved to it under any other applicable law.

§25-104. Specific Powers of the Shade Tree Commission.

In addition to all other powers provided by law, the Shade Tree Commission shall have the following specific powers:

- 1. To issue permits required by this chapter and to enforce its provisions.
- 2. When so requested, to act as an advisory panel to Borough Council on matters having an environmental impact on the Borough, including, but not

¹See 75 Pa.C.S. § 6112.

²See 53 P.S. § 46202(63)

³See 53 P.S. § 47728.

⁴See 53 P.S. § 47741.

limited to, subdivision and land development, park development or improvements, and Borough revitalization and beautification projects.

3. Upon notice, to require the owners of any tree located in the Borough to trim or cut and remove such tree if the same is afflicted with the Dutch Elm or other disease which threatens to injure or destroy other shade trees in the Borough, or if the same is obstructing public streets or rights of way or is about to fall and is dangerous. Such trees are hereby declared to be public nuisances.
4. To make such rules and regulations and to impose such penalties for the violations of same as it may deem necessary and proper, provided that such rules, regulations and penalties are approved by the Borough Council and are not in conflict with any other ordinances of the Borough or statutes of the Commonwealth of Pennsylvania. Penalties shall be assessed against the owner for violations as set forth in this chapter.
5. To prohibit any activity which injures shade trees in and upon any public area.
6. To educate the public relative to the care and control of trees and planting of the same.
7. To work closely with owners to encourage the additional planting of trees when street reconstruction occurs and curbs and/or sidewalks will be replaced.
8. To provide its counsel to the Borough Council on the merits of any petition presented by a majority of the property owners upon any public street for the planting and replanting of shade trees along and upon the sides of such streets.

§25-105. General Regulations.

1. The planting, transplanting, maintenance, care or removal of any shade tree as defined herein, and full compliance with any provision herein shall be the responsibility of the owner on whose property the tree is located or to be

planted or whose property abuts the right-of-way in which the shade tree is located.

2. No person shall affix any foreign object to, or in any way cause injury to, any shade tree within any public area.
3. No person shall plant, transplant, trim, prune or remove, or cause to be planted, transplanted, trimmed, pruned or removed, any shade tree in or overhanging a public area until a permit therefor is granted by or under the authority of the Commission. The application for such permit, which shall be provided by the Borough and which shall be signed by the owner of the abutting premises containing such tree or wherein such tree is proposed to be planted, shall include the details of such planting, trimming or removal, whether by sketch or otherwise, and the same shall be brought to the attention of the Commission, or under proper circumstance to its administrative designee, for approval. Such work shall not be commenced until a permit shall have been secured. A reasonable fee for obtaining such permit may be set by the Commission, subject to the approval of the Borough Council. The Commission or, under proper circumstance, its administrative designee, may refuse a permit for noncompliance with the provisions of this chapter.
4. Whenever a shade tree is removed under authority of a permit issued under this chapter, it shall be replaced within one (1) year with a new shade tree and shall include a root barrier (a type approved by the Commission) unless a waiver is granted by the Commission.
5. Property owners shall trim or prune branches from any shade trees overhanging public streets and highways of the Borough so that they will not obstruct the light from any street light, and so that there shall be a clear height of fourteen (14) feet above the surface of the street and eight (8) feet over the sidewalk. If, upon notice in writing from the Borough, any property owner shall neglect or refuse to trim or prune any shade tree within the time limits specified in such notice, the Borough may cause such trimming or pruning to

be done at the expense of the owner.

6. Whenever, in the opinion of the Commission, a health or safety hazard is caused by a shade tree, the Commission may issue a notice to the owner to take action to correct the condition within thirty-five (35) days of the date of the order, unless exigent circumstances require a shorter time for action, in which event the time for correction shall be so specified. If after notice and expiration of the time for corrective action, the owner fails to take such action, the Borough shall have the required work accomplished to correct the health or safety condition and shall bill the owner for the cost thereof. Upon a failure of the owner to remit the cost, the amount shall be certified by the Commission to Borough Council and to the Borough Treasurer.
7. In the case of a shade tree in or overhanging a public street or highway which poses a serious threat of imminent harm to public health or safety in the nature of an emergency, necessitating the tree's removal in whole or overhanging part, the Commission, or the Borough, as the case may be, may effect its immediate complete or partial removal with only such notification to the owner of the abutting or containing property as required by the Pennsylvania Motor Vehicle Code, or other applicable law. In such event, the costs shall be borne by the owner and the amount owed for such work shall be ascertained and certified by the Commission to the Borough Council and the Borough Treasurer.
8. Whenever, in the opinion of the Commission, the planting, transplanting or removing of any shade tree in a public area, of the necessary and suitable guards, curbing or grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work shall be necessary, it may issue a notice to the owner to take such action within thirty-five (35) days of the date of the notice, unless exigent circumstances require a shorter time for action, in which event the time for correction shall be so specified. If after notice and expiration of the time for

corrective action, the owner fails to take such action, the Borough shall have the required work accomplished and shall bill the owner for the cost thereof. Upon a failure of the owner to remit the cost, the amount shall be certified by the Commission to Borough Council and to the Borough Treasurer.

9. Any permit issued by the Commission shall be effective for such length of time as it shall designate therein. Any permit may be revoked at any time upon proof satisfactory to the Commission, that any of the terms or conditions of the permit have been violated.
10. The Commission shall have the authority, upon notice and hearing, to grant waivers from the provisions of this Ordinance provided the Applicant has demonstrated peculiar circumstances where strict enforcement would result in undue hardship and the public interest will not be adversely affected thereby.
11. Every property owner who intends to plant, transplant, remove or otherwise excavate their property for the addition or removal of shade trees shall notify the proper public utility facility owners via the One Call system before beginning excavation on the site. The owner must delay excavation of the site until notified by the utility facilities that the area is clear of public utility lines.⁵

§25-106. Specific Regulations.

The Commission shall determine, from time to time, regulations for the administration of this chapter, for the manner of planting, pruning, trimming, removal and transplanting of trees, for the establishment of an approved shade tree list, for the establishment of permit fees and for the establishment of fines and penalties, all of which, upon approval by resolution of the Borough Council, shall take effect as if set forth herein.

§25-107. Special Provisions for Shade Trees Located in Borough Parks, Open Space, Recreation Areas, and Other Public Areas.

Where not otherwise governed by the Subdivision and Land Development Chapter or the Zoning Chapter, any new planting proposals concerning public areas shall be

⁵ See 73 P.S. § 176 *et seq.*

reviewed by the Commission and the Commission shall make recommendations on the type of tree that should be planted.

§25-108. Enforcement; Notice; Liens; Collection of Attorney Fees; Penalties.

1. Enforcement.

The Commission, or the Borough, as the case may be and as authorized by law, may institute actions for violations of this Chapter. All penalties or assessments shall be paid to the Borough.

2. Notice Requirements.

A. Upon the failure or neglect of any owner to plant, transplant, protect, trim, prune or remove any shade tree, new tree or replacement tree in and along public areas or perform or refrain from performing any other act required or prohibited under the provisions of this chapter, the Commission shall provide notice of such fact to such owner of the violation by certified mail, restricted delivery. If the owner cannot be so served, service shall be effected by posting the written notice at a conspicuous location upon the premises. In the case of an exigent circumstances where a shade tree is damaged, felled or severely injured as a result of a storm or other cause, an owner shall comply with the provisions of any form of notice actually delivered to such owner within twenty-four (24) hours.

B. Upon the failure or neglect of the owner to comply with the provisions of any notice within thirty (30) days after receiving notice of such violation, or the posting of such notice, whichever the case may be, the Borough may cause the planting, transplanting, protection, trimming, pruning or removal of any shade tree, to be done at the cost thereof plus ten percent (10%) additional together with all charges and expenses, from such owner in accordance with the Acts of Assembly, and in accordance with the law relating to the

filing and collection of municipal claims, or by action of assumpsit.

3. Collection of Attorney Fees.

Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s) or for costs associated with violations of any provision of this Chapter, the Borough shall first comply with the Acts of Assembly related thereto.

4. Amount of Fees.

Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s) or costs associated with violations of this Shade Tree Commission Rules and Regulations, said fees shall be calculated at prevailing rates being charged to the Borough by the Borough Solicitor from time to time.

5. Liens.

Upon the failure of any owner to pay any cost, expense, fee, attorneys fees or penalty established under the authority of this chapter, the Commission shall file a certificate to such effect with the Borough Secretary for transmittal to the Borough Council and Borough Treasurer. Upon the filing of the certificate, the Borough Secretary shall cause 30 days written notice to be given to every owner against whose property such claim has been made. The notice shall state the amount of assessment and the time, place, and manner of payment and shall be accompanied by a copy of the certificate. The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the Council, and if not paid within the time designated in the notice, a claim may be filed and collected by the Borough Solicitor in the manner provided by law. The collection of assessments, the filing of liens, the levying of taxes and the collection of penalties, whether by the Commission or on or behalf of the Borough, are hereby expressly authorized as provided for in said Article XXVII(b) of the Borough of Code of 1966, P.L. (1965) 1656, as amended

6. **Penalty for Violation.**

Any person who shall violate any of these provisions shall, upon a finding thereof in a summary proceeding before a magisterial district judge, be directed to pay a fine or civil judgment of not less than fifty (\$50.00) dollars, nor more than six hundred (\$600.00) dollars, together with the costs of prosecution or enforcement, to be collected as other fines, judgments and costs are now recovered by law, together with the replacement cost of all work not meeting specifications.

7. **Other Remedies Preserved.**

Nothing herein shall prevent the Borough from seeking available remedies at law or in equity, to include injunctive or equitable relief to insure compliance with this Chapter.

8. **Remedies Several, Collective and Cumulative.**

All enforcement remedies provided herein may be exercised severally or collectively as the Borough Council shall determine. The exercise of one remedy shall not preclude other enforcement proceedings.

9. **Voluntary Compliance.**

Nothing in this Ordinance shall be construed to prevent any owner or owners of property within the Borough from voluntarily complying with the terms and conditions of this Ordinance prior to action by the Commission or the Borough of Mechanicsburg.

§25-109. Severability.

If any sentence, clause, section or part of this Chapter is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or parts of this regulation. It is hereby declared as the intent of the Borough that these provisions would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not included herein.

§25-110. Hearings.

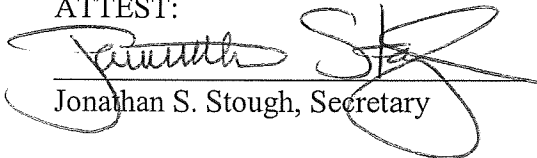
Any person aggrieved by a notice, determination, refusal, act or failure to act issued, taken or omitted under this chapter shall have the right to a hearing to be held by the Commission, which hearing shall be held pursuant to the administrative law for local agencies.⁶ Notice of the time and place of the meeting at which said hearing shall occur shall be given according to law.⁷ In all cases, the aggrieved party shall be given personal notice by regular mail of the date, time and place of the meeting, which notice shall generally specify the rights granted to the party under law. Any person aggrieved by a decision of the Commission shall have the right to appeal said decision to the Court of Common Pleas of Cumberland County within 30 days of the date of said decision. Should no appeal be filed, the cost of the work and any penalty imposed by the Commission shall be certified by the Commission to Borough Council and Borough Treasurer as provided in this chapter.

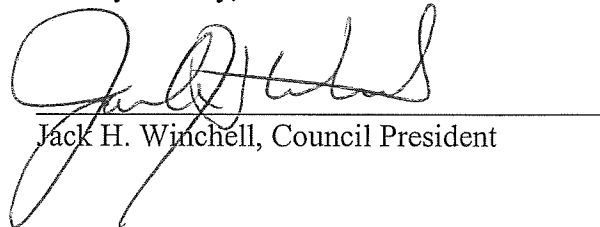
SECTION 3: All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4: In all other respects, Chapter 1 [Administration and Government] of the Code of Ordinances of the Borough of Mechanicsburg shall remain as heretofore enacted, ordained and amended, which said Chapter, as amended, is hereby re-enacted in its entirety herein.

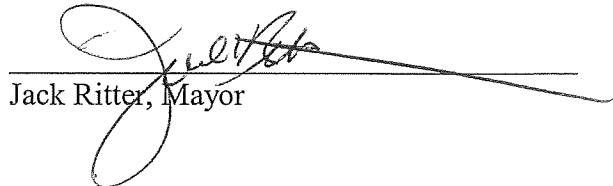
ENACTED AND ORDAINED this 5th day of July, 2005.

ATTEST:


Jonathan S. Stough, Secretary


Jack H. Winchell, Council President

APPROVED this 5th day of July, 2005.


Jack Ritter, Mayor

⁶See 2 Pa.C.S. § 551 *et seq.*

⁷See 65 Pa.C.S. § 701 *et seq.*

RESOLUTION NO. 01-2010

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE
BOROUGH OF MECHANICSBURG APPROVING THE
ESTABLISHMENT OF RULES, REGULATIONS, FEES AND
PENALTIES GOVERNING SHADE TREES IN THE
BOROUGH**

WHEREAS, the Borough Council of the Borough of Mechanicsburg has identified the importance of natural resources – including the expansion of the existing street tree network – through the adopted 2007 Borough of Mechanicsburg Comprehensive Plan; and

WHEREAS, Goal Six of the 2007 comprehensive plan states that the Borough of Mechanicsburg shall “embrace and enhance the community’s natural resources as ecological, recreational and civic amenities for local and regional users;” and

WHEREAS, the Borough Council of the Borough of Mechanicsburg has heretofore enacted Chapter 1 [Administration and Government] and Chapter 25 [Trees] of the Code of Ordinances of the Borough of Mechanicsburg (herein, Code); and

WHEREAS, pursuant to said Chapters, a Shade Tree Commission is established and empowered to exercise certain jurisdiction over shade trees, as that term is defined in Chapter 25; and

WHEREAS, pursuant to Section 1-425 of Chapter 1 and Section 25-104 of Chapter 25, the Shade Tree Commission, upon approval of the Borough Council, is empowered to adopt rules, regulations, fees and civil penalties for the administration of provisions relating to shade trees; and

WHEREAS, the Shade Tree Commission has duly considered the matter and has determined to impose the following rules, regulations, fees and civil penalties concerning shade trees within its jurisdiction; and

WHEREAS, after due consideration, the Borough Council has determined to approve the rules, regulations, fees and civil penalties hereinafter specified.

NOW, THEREFORE, be it duly resolved by the Shade Tree Commission of the Borough of Mechanicsburg that the following provisions be adopted, and BE IT FURTHER RESOLVED by the Borough Council that the same shall be approved:

Rules and Regulations Governing the Planting of Shade Trees

1. Whenever a new shade tree is planted within ten (10') feet of a curb, public sidewalk, or non-curbed street, a root barrier of a type approved by the Commission shall be installed.
2. Trees to be planted shall not be less than one (1") inch caliber at a point six (6") inches above the ground, symmetrical in shape with a clean trunk.
3. The planting of any species other than those identified on the approved list on file in the Office of the Borough Secretary is prohibited. In addition, specific planting conditions are identified in association with specific tree species. The planting of tree species will conform to the set of approved planting conditions on file in the Office of the Borough Secretary. The Mechanicsburg Shade Tree Commission reserves the right to permit additional species (or within different conditions) on a case-by-case basis.
4. No shade tree shall be planted less than thirty (30') feet, from an intersection of two streets, whether curbed or non-curbed, measured from the right-of-way line of the intersecting streets, or less than eight (8') feet from a fire hydrant, sewer inlet, light standard, utility pole, or underground utilities (as defined as sewer, gas or water lines.) These spacing restrictions may be modified at the discretion of the Commission.
6. Where trees are to be planted in existing pavement, a space at least three (3') feet by three (3') feet shall be provided for each tree. For the information of the applicant, a planting space of five (5') by (5') would be preferred. Each tree shall be planted with a root barrier. The opening shall be level with the sidewalk and covered with an appropriate material to reduce the spread of weeds (e.g. tanbark, mulch or grating.) Exceptions may be granted in certain specific instances at the discretion of the Commission.

Permit and Hearing Fees

The following fees shall be paid for permits:

- | | | |
|----|--------------------------------|-----------|
| 1. | For the planting of each tree: | No Charge |
| 2. | For the pruning of each tree: | No Charge |
| 3. | For the removal of each tree: | No Charge |

4. For a formal appeal hearing before

The Shade Tree Commission:

\$100.00 (may be waived in whole or
in part by the Council, in its
discretion)

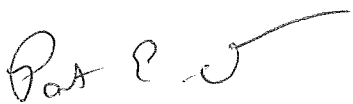
Civil Penalties

The following civil penalties may be imposed by the Commission upon each person, whether owner or actor or both, for each violation of the provisions of Chapter 25 of the Code. These penalties shall be considered independent of, and in addition to, any penalties imposed by a magisterial district judge for conviction of summary offenses brought under the provisions of Section 25-108(6) of Chapter 25 of the Code. Civil penalties may be imposed concurrently for each specific violation and may be imposed for each day of violation. As set forth in Chapter 25 of the Code, civil penalties may be certified to Borough Council to be assessed as a lien against the affected property.

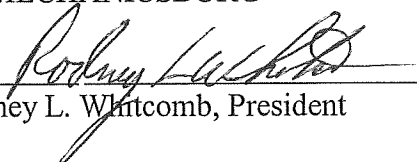
1. For failing to obtain a required permit:
Not less than \$50.00, nor more than \$100.00.
2. For planting a tree in violation of any provision of the Code:
Not less than \$50.00, nor more than \$100.00.
3. For pruning a tree in violation of any provision of the Code:
Not less than \$50.00, nor more than \$100.00.
4. For removing a tree in violation of any provision of the Code:
Not less than \$50.00, nor more than \$600.00.
5. For violating any order of the Commission:
Not less than \$50.00, nor more than \$600.00.
6. For violation of any other provision of the Code:
Not less than \$50.00, nor more than \$600.00.

DULY RESOLVED, this 6th day of April, 2010.

ATTEST:

By: 
Patrick E. Dennis, Secretary

BOROUGH COUNCIL OF THE BOROUGH
OF MECHANICSBURG

By: 
Rodney L. Whitcomb, President